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Part 2: a.139 - On

Supreme Court, U.S.
FILED

09-869 JAN 14 2010

OFFICE OF THE CLERK
William K. Suter, Clerk

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

DON BENNY ANDERSON,

Petitioner,

v.

UNITED STATES PAROLE COMMISSION,

FEDERAL BUREAU OF INVESTIGATION, AND

UNITED STATES OF AMERICA

Respondents,

On Petition for a Writ of Certiorari to the

United States Court of Appeals for the

Ninth Circuit Case No. 09-16311

Don Benny Anderson
Counsel of Record, pro se
2500 Moultrie Avenue
P. O. Box 1156
Mattoon, Illinois 61938-1156
(217) 246-4999

Date: January 14, 2010

Note: New Address

Don Benny Anderson
2500 Moultrie Avenue
Mattoon, Illinois 61938

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DON BENNY ANDERSON,	
Petitioner - Plaintiff,	PETITIONER-PLAINTIFF'S REBUTTAL TO GOVERNMENT'S DELIBERATELY COMBINED MOTION TO DISMISS 2:08-cv-01256- JCM-LRL 2:08-cv-01486-RCJ-PAL 2:08-CV-01501-KJD-GWF 2:08-CV-01514-JCM-GWF PETITIONS FOR WRIT OF HABEAS CORPUS, AND TO PROHIBIT PETITIONER FROM FILING ANY FURTHER PETITIONS FOR HABEAS CORPUS IN THE DISTRICT OF NEVADA AND PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
v.	
UNITED STATES PAROLE COMMISSION,	
Respondent	

) MOTION TO DISMISS
) WAS TIMELY SENT –
) CLERK RETURNED IT
) STATING "YOU MUST
) AN ORIGINAL MOTION
) FOR EACH CASE YOU
) HAVE."
)
) ORIGINAL MOTION
) FOR SUMMARY
) JUDGMENT AND TO
) DISMISS NO: 2:08-cv
) 01256-JCM-LRL

PLAINTIFF'S MOTION FOR SUMMARY JUDGEMNT AND MOTION TO DISMISS GOVERNMENT'S MOTION

Pursuant to Federal Rule of Civil Procedure 56, Plaintiff, Don Benny Anderson, respectfully moves the court to dismiss Government's motions and for summary judgment in all of his following cases mentioned herein in his favor. *Timeliness Certification:* This motion is timely filed.

TITLE 18 SECTION 1621 UNSWORN DECLARATIONS OF EVIDENCE
UNSWORN AFFIDAVIT/DECLARATIONS OF DON BENNY ANDERSON UNDER THE PENALTY OF PERJURY PURSUANT TO TITLE 28 U.S.C. SECTION 1746 PRESENTS THE FOLLOWING CONCISE STATEMENT SETTING FORTH EACH FACT MATERIAL TO THE DISPOSITION OF THIS MOTION

1. My name is DON BENNY ANDERSON. I am sixty-eight (68) years of age, having been born on December 19, 1940; in Springfield, Illinois;

2. I am of sound mind and fully competent to make this Affidavit/Declarations under the penalty of perjury;
3. This Affidavit/Declarations must stand for Truth and Fact, unless challenged point-for-point by an opposing Affidavit/Declarations drawn under the same terms and conditions as this instrument;
4. This Affidavit/Declarations will stand for Truth and Fact before United States District Court, District of Nevada, in this Writ of Habeas Corpus;
5. This Affidavit/Declarations is made on personal knowledge and set forth facts that are admissible evidence;
6. Affiant/Plaintiff is serving a United States Parole Commission sentence;
7. Therefore, Respondent is the United States Parole Commission;
8. Writ of habeas corpus may be granted where Affiant is in custody in violation of the Constitution or laws or treaties of the United States. Title 28 U.S.C. Section 2241(c) 3);
9. Affiant's petition seeking habeas corpus relief is appropriate under 28 U.S.C. Section 2241 because he is challenging the fact or duration of his confinement/custody or restraint;
10. Pursuant to Title 28 U.S.C. Section 2241 is appropriate being used to challenge circumstance of confinement/ custody or restriction to one area and restrain of liberty;
11. Respondent has failed to file an appropriate answer or motion together with transcripts of all federal and state court proceedings, including federal and state prosecutors records and prosecutors notes, grand jury transcripts, appeal records and transcripts and totality of federal and state court records and agents notes and agencies records and investigative reports;

12. Respondent has failed to make a return certifying the true cause of detention as mandated by Title 28 Section 2243.
13. Because Affiant, who is currently serving a sentence that was enhanced on the basis of a prior conviction is still in custody, he may challenge the enhancing conviction as constitutionally invalid even though the prior conviction's original custodial term has expired;
14. Affiant can collaterally attack the validity of a previous conviction used to enhance United States Parole Commission sentence obtained in violation of right to self-representation or right to counsel;
15. Habeas corpus via 2241 is appropriate where United States Parole Commission knowingly and willingly covered up organized government crime and illegally and unconstitutionally imposed sentence;
16. Affiant attacks the execution of sentence by United States Parole Commission and only cognizable under 28 U.S.C. Section 2241;
17. Affiant is entitled to federal habeas relief via 2241 if it is found that no rational trier of fact could have found proof of guilt beyond a reasonable doubt to the element of the offense as defined by federal or state law;
18. Affiant had an absolute right to be represented by counsel in all federal and state cases from conviction on appeal;
19. The Sixth Amendment right to the effective assistance of trial counsel has been extended to guarantee the effective assistance of counsel on the appeal by right;
20. Affiant was denied effective assistance of counsel in all federal and state cases and including appeal;
21. Affiant was in WANT OF EFFECTIVE ASSISTANCE OF COUNSEL AT ALL TRIALS AND ON APPEAL,

in violation of his Sixth Amendment right and Fourteenth Amendment right.

22. Affiant's convictions, sentences and custody are in violation of ARTICLE III, Sec. 2, Cl.3 and Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution;
23. Affiant never knowingly, willingly and intelligently waived his constitutional rights.
24. Affiant/Petitioner/Plaintiff is entitled to summary judgment where the documentary evidence produced by the parties permits only one conclusion. Anderson v. Liberty Lobby, Inc., ,251-52(1986);
25. Affiant seeking summary judgment bears the initial responsibility of informing the Court of the basis of his motion, and identifying those portions of pleadings on file, together with the affidavits, which Plaintiff has done herein within Affidavit that he believes demonstrates the "absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 325 (1986) (quoting Fed. R. Civ. P. 56 (c));
26. Respondent is being informed of its right to file counter-affidavits or other responsive evidentiary materials and failure to do so might result in summary judgment against respondent;
27. If the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.';
28. A party opposing a motion for summary judgment shall file a concise statement, and the source thereof in the record, of all material facts as to which there is a genuine issue precluding summary judgment;
29. Court cannot grant summary judgment for Government's motions because summary judgment is improper where the slightest doubt remains about the facts. See Rand v Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998;

30. Purpose of a motion for summary judgment is to head off a full-scale trial by conducting a trial in miniature, on affidavits, so that not submitting affidavits is the equivalent of not presenting any evidence at trial. See Rand v Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998;
31. Government never submitted any affidavits with its motions; therefore, never presented any evidence at trial;
32. Pro se litigants have a statutory right to self-representation in civil matters and must be ensured of meaningful access to the courts;
33. Consequently, we tolerate informalities from civil pro se litigants. See Haines v. Kerner, , 520-21(1972) (Pro se pleadings are held to less stringent standards than those prepared by attorneys.) See Rand v Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998; .
34. Courts have a general duty "to ensure that pro se litigants do not lose their right to a hearing on the merits of their claim due to ignorance of technical procedural requirements" and "develop other procedural protections for pro se litigants" See Rand v Rowland, U.S. Court of Appeals for the 9th Cir., August 27, 1998.
35. With criminal intent Court and United States Attorney conspirators have designed ways for this pro se litigant and others to lose meritorious cases at every stage of Court's proceedings including requiring special paperwork, "procedural booby traps," with requirements in this case not imposed on lawyers.
36. Court judges and Government have demonstrated their contempt for the United States Supreme Court and U.S. Court of Appeals for the 9 Cir. decisions and

their criminal intent to overthrow them to cover up organized crime:

"Consequently, we tolerate informalities from civil pro se litigants. See Haines v. Kerner, , 520-21(1972) (pro se pleadings are held to less stringent standards than those prepared by attorneys). See Rand v Rowland, U.S. Court of Appeals for the 9th Cir., August 27, 1998."

37. Court used boilerplated Orders claiming lack of jurisdiction.

38. Due to Court coerced paper work that Affiant/Petitioner/Plaintiff was forced to use Government was able to use boilerplated motions with irrelevant and misleading claims like the following: **"Respondent cannot make any representations concerning the factual background of Petitioner's case because Petitioner has not alleged that he has been convicted in a federal crime in the District of Nevada."**

PLAINTIFF'S REBUTTAL TO "GOVERNMENT'S MOTION TO DISMISS PETITIONS FOR WRIT OF HABEAS CORPUS, AND TO PROHIBIT PETITIONER FROM FILING ANY FURTHER PETITIONS FOR HABEAS CORPUS IN THE DISTRICT OF NEVADA"

Rebuttal:

a) Affiant/Petitioner/Plaintiff response is that Gregory A. Brower, United States Attorney and Robert L Ellman, Appellate Chief and Assistant U.S. Attorney are criminals acting under the color of law to cover up organized crime.

b) Moving this Court to issue an Order directing the Clerk of this Court to strike any further petitions or pleadings (1) filed by Petitioner and (2) which appear to arise out of conviction(s) and/or sentences(s) imposed in other jurisdictions, or claims arising in other jurisdictions.

c) Following are some of the crimes that they are aware of, covering up, joined or are aiding and abetting:

U.S. Attorney is attempting to block the following claims from being considered by Court via Government's motion:

Case 1) 2:08-cv-01256-JCM-LRL, U.S. District Court, Memphis, TN – Some issues of case which judge and U.S. Attorney are attempting to cover up: a) Secret Trial held in absentia in 1987, date unknown, Offense Explosives Property Destruction, Sentence 42 years; b) Anderson had been incarcerated since 1982 and had no knowledge of this case until 9/18/2008.

"STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSION OF LAW".

This portion of this motion for summary judgment is made on the following claims made in GROUND 1:

a) I allege that my court conviction and/or sentence are unconstitutional, in violation of my Sixth Amendment right to effective assistance of counsel based on these facts:

b) Counsel failed to prevent trial in absentia.

c) Counsel failed to prevent continuing collateral consequences and concrete and continuing injury from conviction,

d) with following civil disabilities imposed by operation of law-imposed by federal or state law:

e) (1) petitioner required to register with Las Vegas Metropolitan Police because on parole on Sept. 18, 2008

f) at which time he was informed about this conviction that occurred in Memphis, TN in 1987, carrying a 42-year sentence;

g) (2) petitioner's travel is restricted and he was required to return to Illinois after a week;

h) (3) petitioner is unable to establish a residence and business (gun sales) in Nevada;

i) (4) requirement to report to Parole Officer when contacted by any law enforcement, when changing employment or other causes as well as reporting monthly;

j) (5) petitioner cannot possess firearms;

k) (6) petitioner cannot have any contact with other convicted felons and must report same, should it occur.

l) Counsel failed to expose national conspiracy involving FBI, BATF, federal and state prosecutors, defense counsels to cover up their crimes against Anderson.

m) Anderson was denied due process,

n) the right to defend himself or contribute to his own defense at trial and appeal.

There are no disputed issues of material fact concerning the first (claim).

GROUND 1 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

This portion of this motion for summary judgment is made on the following claims made in GROUND 2:

a) I allege that my court conviction and/or sentence are unconstitutional, in violation of Fifth Amendment right to due process based on these facts:
b) Anderson relies on In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.368 (1970);
c) "Constitutional stature of the reasonable doubt standard, we explicitly hold that the Due Process Clause protects the accused conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute crime of which he was charged."
d) Don Benny Anderson is factually and actually innocent of all Federal and State crimes alleged in charging instruments.
e) Court tape recordings and transcripts are void of any evidence showing the Don Benny Anderson is guilty of charged crimes beyond a reasonable doubt standard.
f) At the time of the alleged trial, Anderson was in prison and was not present.
g) [This trial was held to cover up the fact that] Anderson had an illegal trial in United States District Court Eastern District of Virginia, Case No. 83-00159-
h) For which Anderson's copy of the Grand Jury indictment is not signed by Grand Jury Foreman.
i) Anderson told the judge he did not commit the crime and acts charged.
j) Judge said he would have to stand trial.
k) No trial by jury was held but the judge created a fictional judgment.
l) Presentence report stated that had the case gone to trial, prosecutor would have shown that Anderson was affiliated with the Army of God.
m) No evidence was presented.

n) Winship should protect against this court sustaining conviction and judgment since court stenographer reported that court notes were destroyed and prosecutor stated that tape recordings were inaudible and all records of the case have been lost.

o) Following this, a secret trial in absentia was held in Memphis, TN in 1987.

p) Anderson was not allowed to represent himself or appeal either conviction.

There are no disputed issues of material fact concerning the second (claim) GROUND for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

This portion of this motion for summary judgment is made on the following claims made in GROUND 3:

a) I allege that my court conviction and /or sentence are unconstitutional, in violation of my Article III, Sec.2, Cl.3 right to trial by jury in state where crime was committed, based on these facts:

b) Abuse of Power: Judges constitutional mandate and duty for a judge to have jurisdiction is Article III, Sect.2, Cl.3. –

c) "The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed."

d) It is government's duty (both specified and implied) to provide trial by jury in all criminal cases, regardless of the wishes of any defendant, defense attorney, prosecutor, or any judge.

e) Anderson never had a trial as required by Article III, Sect.2, Cl.3 in any case mentioned or any federal presentence report used for judgments.

f) The court acted in complete absence of jurisdiction.
g) Therefore Anderson request that this court, sua sponte, on its own motion and pursuant 2243 which confers on federal courts the discretion to dispose of habeas corpus matters and to tailor remedies as "law and justice require"
h) order compensation or relief as this court would deem just and proper, if any there be at law, lest Don Benny Anderson, Petitioner, suffer further irreparable injury,
i) and expungement of all government records which are to be turned over to Anderson.

There are no disputed issues of material fact concerning the third (claim) GROUND 3 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

Case 2) 2:08-cv-01486-RCJ-PAL, U.S. District Court for the Southern District of Illinois, Alton IL – Issues of this [these] case[s]: a) Trial[s] held in absentia in 1986 [and 1987] date[s] unknown; Anderson was incarcerated since 1982 and had no knowledge of this [these] case[s] until 9/18/2008.

"STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSION OF LAW".

This portion of this motion for summary judgment is made on the following claims made in GROUND 1:

a) I allege that my court conviction and/or sentence are unconstitutional, in violation of my Sixth Amendment right to effective assistance of counsel based on these facts:
b) Counsel failed to prevent trial in absentia.

c) Counsel failed to prevent continuing collateral consequences and concrete and continuing injury from conviction,

d) with following civil disabilities imposed by operation of law imposed by federal or state law:

e) (1) petitioner required to register with Las Vegas Metropolitan Police because on parole on Sept. 18, 2008

f) at which time he was informed about this conviction that occurred in Alton, IL in 1986 [and another secret trial in absentia in 1987], which United States attorney is trying to stop Plaintiff from filing suit on in this court, carrying a 12-year sentence [each];

g) (2) petitioner's travel is restricted and he was required to return to Illinois after a week;

h) (3) petitioner is unable to establish a residence and business (gun sales) in Nevada;

i) (4) requirement to report to Parole Officer when contacted by any law enforcement, when changing employment or other causes as well as reporting monthly;

j) (5) petitioner cannot possess firearms;

k) (6) petitioner cannot have any contact with other convicted felons and must report same should it occur.

l) Counsel failed to expose national conspiracy involving FBI, BATF, U.S. Marshals federal and state prosecutors, defense counsels to cover up their crimes against Anderson.

m) Anderson was denied due process,

n) the right to represent himself at trial and appeal or contribute to his own defense.

There are no disputed issues of material fact concerning the first (claim) GROUND 1 for relief and, as a

matter of law, the legal issues must be decided in Anderson's favor.

This portion of this motion for summary judgment is made on the following claims made in GROUND 2:

b) I allege that my court conviction and/or sentence are unconstitutional, in violation of Fifth Amendment right to due process based on these facts:

c) Anderson relies on In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.368 (1970);

d) "Constitutional stature of the reasonable doubt standard, we explicitly hold that the Due Process Clause protects the accused conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute crime of which he was charged."

e) Don Benny Anderson is factually and actually innocent of all Federal and State crimes alleged in charging instruments.

f) At the time of the alleged trial[s in 1986 and 1978] Anderson was in prison and was not present.

g) United States District Court for the Southern District of Illinois held a trial, Criminal No. 82-50031, filed November 1982.

h) Anderson told the judge that he knew no crime was committed, based on jury instructions.

i) He asked the judge "How did I commit the crime?

j) To which the judge replied, "I can't tell you."

k) So the judge created a fictional judgment after Anderson was removed from court. Convictions in 1986 [and 1987] were created to cover up the court's lack of jurisdiction in 1982,

l) As well as to cover up the kidnapping of Anderson by FBI and U.S. prosecutors, etc.
m) Co-defendants were caught on tape in December 1982 stating Anderson was not involved in the crimes.
n) Before Anderson's trial, co-defendants were coerced to plead guilty to give impression that Anderson was involved,
o) but no evidence was presented which met the reasonable doubt standard.

There are no disputed issues of material fact concerning the second (claim)

GROUND 2 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

.....

This portion of this motion for summary judgment is made on the following claims made in GROUND 3:

a) I allege that my court conviction and /or sentence are unconstitutional, in violation of my Article III, Sec.2, Cl.3 right to trial by jury in state where crime was committed, based on these facts:
b) Abuse of Power: Judges constitutional mandate and duty for a judge to have jurisdiction is Article III, Sect.2, Cl.3. –
c) "The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed."
d) It is government's duty (both specified and implied) to provide trial by jury in all criminal cases, regardless of the wishes of any defendant, defense attorney, prosecutor, or any judge.

e) Anderson never had a trial as required by Article III, Sec.2, Cl.3 in this case or any cases mentioned any federal or state presentence report used for judgments.
f) The court acted in complete absence of jurisdiction.
g) Therefore Anderson request that this court, sua sponte, on its own motion and pursuant 2243 which confers on federal courts the discretion to dispose of habeas corpus matters and to tailor remedies as "law and justice require"
h) Order compensation or relief as this court would deem just and proper, if any there be at law,
i) and expungement of all government records which are to be turned over to Anderson,
j) lest Don Benny Anderson, Petitioner, suffer further irreparable injury,

There are no disputed issues of material fact concerning the third (claim)

GROUND 3 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

Case 3) 2:08-cv-01501-KJD-GWF, Circuit Court – Pinellas County, Clearwater, FL – Issues of this case: a) Terms of coerced plea agreement of nolo contendere – defendant not placed under oath or asked any questions; prosecutor presented no evidence; no adjudication of guilt; b) government withheld evidence that Matthew Moore had claimed that he alone had committed the crimes for which Anderson was charged; c) Anderson submitted Notice of Appeal, but was not allowed to appeal conviction and sentence.

"STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSION OF LAW".

This portion of this motion for summary judgment is made on the following claims made in GROUND 1:

a) I allege that my court conviction and/or sentence are unconstitutional, in violation of my Sixth Amendment right to effective assistance of counsel based on these facts:
b) Counsel failed to prevent continuing collateral consequences and concrete and continuing injury from conviction,
c) with following civil disabilities imposed by operation of law-imposed by federal or state law:
d) (1) petitioner required to register with Las Vegas Metropolitan Police because on parole on Sept. 18, 2008;
e) (2) petitioner's travel is restricted and he was required to return to Illinois after a week;
f) (3) petitioner is unable to establish a residence and gun sales business in Nevada;
g) (4) requirement to report to Parole Officer when contacted by any law enforcement, when changing employment or other causes as well as reporting monthly;
h) (5) petitioner cannot possess firearms;
i) (6) petitioner cannot have any contact with other convicted felons and must report same, should it occur.
j) Counsel failed to expose national conspiracy involving FBI, BATF, U.S. Marshals, federal and state prosecutors, defense counsels to cover up their crimes against Anderson.
k) Counsel failed to interview or investigate, or prepare petitioner for trial.

l) He did not discuss aspects of case or advise Petitioner, except to recommend that he enter plea.

m) Ineffective counsel permitted violation of the 5th Amendment right barring self-incrimination and use of a coerced confession..

n) Defense counsel withheld evidence that was material in defense of Petitioner and would have exonerated him, i.e. a confession by another to the crime that Petitioner was convicted of.

o) No trial was held, as required by Article III, Sec.2, Cl.3,

p) and counsel permitted a plea of nolo contendere to be induced by the District Judge and, in fact, not voluntarily made by Anderson.

There are no disputed issues of material fact concerning the first (claim) GROUND 1 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

This portion of this motion for summary judgment is made on the following claims made in GROUND 2:

a) I allege that my court conviction and/or sentence are unconstitutional, in violation of Fifth Amendment right to due process based on these facts:

b) Anderson relies on In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.368 (1970);

b) "Constitutional stature of the reasonable doubt standard, we explicitly hold that the Due Process Clause protects the accused conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute crime of which he was charged."

c) Don Benny Anderson is factually and actually innocent of all Federal and State crimes alleged in charging instruments.
d) Court tape recordings and transcripts are void of any evidence showing the Don Benny Anderson is guilty of charged crimes beyond a reasonable doubt standard.
e) Due process was denied as shown by the following:
f) Matthew Moore robbed the abortion clinic mentioned in the charges. He told the Doctor that, if he did not quit performing abortions he would be back. Subsequently Moore set fire to both clinics in St. Petersburg and Clearwater, FL.
g) He then typed a letter, left it at the door of a local TV station, called the station and told them where the letter was located and that he alone had committed the crimes.
h) Joint task force of FBI state officials and U.S. prosecutors withheld this information from Anderson.
i) Evidence withheld was material in defense of Petitioner and would have exonerated him
j) which made proof beyond a reasonable doubt impossible.
k) Before sentencing in Illinois, and prior to Petitioner's appearance on this case, ATF and Florida agents met with Anderson without counsel present, and coerced him into a plea agreement.
l) No trial was held as required by Article III, Sec.2, Cl.3.
m) Moore was coerced into implicating Anderson as part of a plea agreement, after committing perjury, in Criminal No. 82-50031.

There are no disputed issues of material fact concerning the second (claim) GROUND 2 for relief and,

as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

This portion of this motion for summary judgment is made on the following claims made in GROUND 3:

a) I allege that my court conviction and /or sentence are unconstitutional, in violation of my Article III, Sec.2, Cl.3 right to trial by jury in state where crime was committed, based on these facts:

b) Judge O'Brien, Sixth Judicial Court, Pinellas County, FL entered in an agreement with Anderson

c) that Anderson would plead nolo contendere to crimes if the following conditions were met:

d) (1) the sentence to run concurrent with federal sentence in Illinois,

e) (2) no adjudication of guilt to be made;

f) (3) Petitioner would not give up right of appeal;

g) (4) any inference of guilt would be expunged after prison term or parole ends;

h) (5) Matthew and Wayne Moore would be offered the same opportunity.

i) Anderson entered plea agreement with judge's full knowledge that he maintained his innocence.

j) No questions were asked under oath or placed on the record.

k) Abuse of Power: Judges constitutional mandate and duty for a judge to have jurisdiction is a Article III, Sect.2, Cl.3. –

l) "The trial of all crimes, except in cases of impeachment, shall be by
jury, and such trial shall be held in the State where the said crimes
shall have been committed."

m) It is government's duty (both specified and implied) to provide trial by jury in all criminal cases,

regardless of the wishes of any defendant, defense attorney, prosecutor, or any judge.

n) Anderson never had a trial as required by Article III, Sect.2, Cl.3 in this case or any state or federal case mentioned in any presentence report, which were created after Anderson had been sentenced and removed from court.

o) The court acted in complete absence of jurisdiction.

k) 2243 confers upon the court jurisdiction to tailor remedies as law and justice require, to order compensation and relief as this court would deem just and proper, and expungement of all government records, to be turned over to Don Benny Anderson.

There are no disputed issues of material fact concerning the third (claim) GROUND 3 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

Case 4) 2:08-cv-01514-JCM-GWF, 284th Judicial District Court of Harris County, Houston, TX – Issues of this case: a) Bench trial held in 1980, with insufficient evidence, counsel did not demand jury trial; b) In 1984, petitioner again appeared, was not allowed to represent himself, no evidence presented but petitioner coerced to plead guilty; c) Anderson submitted Notice of Appeal, but was not allowed to appeal conviction and sentence; d) violation of double jeopardy clause – U.S. Constitution.

"STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSION OF LAW".

This portion of this motion for summary judgment is made on the following claims made in GROUND 1:

a) I allege that my court conviction and/or sentence are unconstitutional, in violation of my Sixth Amendment right to effective assistance of counsel based on these facts:
b) Counsel failed to prevent continuing collateral consequences and concrete and continuing injury from conviction,
c) with following civil disabilities imposed by operation of law imposed by federal or state law:
d) (1) petitioner required to register with Las Vegas Metropolitan Police because on parole on Sept. 18, 2008,
e) (2) petitioner's travel is restricted and he was required to return to Illinois after a week;
f) (3) petitioner is unable to establish a residence and gun sales business in Nevada;
g) (4) requirement to report to Parole Officer when contacted by any law enforcement, when changing employment or other causes as well as reporting monthly;
h) (5) petitioner cannot own firearms;
i) (6) petitioner cannot have any contact with other convicted felons and must report same, should it occur.
j) Counsel failed to expose national conspiracy involving FBI, BATF, U.S. Marshals, federal and state prosecutors, defense counsels to cover up their crimes against Anderson.
k) Counsel failed to interview or investigate, or prepare petitioner for trial.
l) He did not discuss aspects of case or advise petitioner except to recommend that he enter plea.

m) Ineffective counsel failed to prevent self-incrimination and allowed coerced plea of guilty.
n) Defense counsel withhold evidence that was material in defense of Petitioner and would have exonerated him,
o) i.e. (1) second trial was in violation of double jeopardy clause;
p) (2) grand jury indictments failed to state what document was executed by deception;
q) (3) by doing research Defense Counsel could have produced indictment for Anderson to read and found incontrovertible proof of factual and actual innocence making it impossible to meet the burden of proof beyond a reasonable doubt;
r) (4) failed to produce or covered up warranty deed, affidavit of Marie S. Wheatfall, check paid for consideration for property, rental agreement [about $1,800 also paid to mortgage company for back payments due].

There are no disputed issues of material fact concerning the first (claim) GROUND 1 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

This portion of this motion for summary judgment is made on the following claims made in GROUND 2:

a) I allege that my court conviction and/or sentence are unconstitutional, in violation of Fifth Amendment right to due process based on these facts:
b) Anderson relies on In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.368 (1970);
c) "Constitutional stature of the reasonable doubt standard, we explicitly hold that the Due Process

Clause protects the accused conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute crime of which he was charged."

d) Don Benny Anderson is factually and actually innocent.

e) Court tape recordings and transcripts are void of any evidence showing the Don Benny Anderson is guilty of charged crimes beyond a reasonable doubt standard.

f) In 1980, Petitioner allegedly had a bench trial.

g) With insufficient evidence, petitioner was not sentenced. Indictment was not read and defense counsel did not demand jury trial.

h) In 1984, Petitioner was again brought back to court.

i) Petitioner sent notice to court that he would represent himself, but was coerced to have a court appointed Public Defender.

j) Prosecutor said it would not be necessary to read indictment in court, to sign a plea agreement, nor would a Pre-sentence report be needed.

k) No questions were asked in court about how crime committed and no evidence was submitted. A coerced plea was made in violation of double jeopardy clause and without a factual basis that a crime was committed.

l) Subsequently Petitioner filed a Notice of Appeal himself, but was kept outside the courtroom.

m) A new attorney met him outside the courtroom and told Petitioner he had been appointed to represent him.

n) Petitioner was subsequently moved out of state so that he could not argue his issues in appeal, or that court lacked jurisdiction.

o) Petitioner never heard from his court appointed attorney.

There are no disputed issues of material fact concerning the second (claim) GROUND 2 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

This portion of this motion for summary judgment is made on the following claims made in GROUND 3:

a) I allege that my court conviction and /or sentence are unconstitutional, in violation of my Article III, Sec.2, Cl.3 right to trial by jury in state where crime was committed, based on these facts:

b) Abuse of Power: Judges constitutional mandate and duty for a judge to have jurisdiction is an Article III, Sec.2, Cl.3-

c) "The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed."

d) It is government's duty (both specified and implied) to provide trial by jury in all criminal cases, regardless of the wishes of any defendant, defense attorney, prosecutor, or any judge.

e) Anderson never had a trial as required by Article III, Sect.2, Cl.3 in this case.

f) Congress has mandated that legal sentences conform with U.S.C.A. Rule 6.

g) The Grand Jury: (b) (2) "The court must not dismiss the indictment on the ground that a grand juror was not legally qualified if the records show that at least 12 qualified jurors concurred in the indictment...

h) ... the foreperson will record the number of jurors concurring in every indictment and will file the record with the clerk.".

i) Since there was no lawful Grand Jury, court did not comply with above.

j) The court acted in complete absence of jurisdiction to create a lawful conviction and sentence.

k) Therefore, Anderson requests that this court, sua sponte, on its own motion and pursuant 2243 which confers on federal courts the discretion to dispose of habeas corpus matters and to tailor remedies as "law and justice require"

l) order compensation or relief as this court would deem just and proper. See case of Ervin McGee, Jr. vs. City of Tulsa (2007) where $14.5 million awarded for wrongful conviction and imprisonment.

m) Petitioner further requests expungment of all government records of the case with all records to be turned over to Anderson.

There are no disputed issues of material fact concerning the third (claim) GROUND 3 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

Case 5) 2:08-cv-01566-RCJ-GWF, U.S. District Court, Alexandria VA – Some issues of case which U.S. Attorney is attempting to cover up: a) Anderson submitted Notice of Appeal, but was not allowed to appeal conviction ; b)Anderson was told that the prosecutor would state that he was only an accessory after the fact; Judge asked Anderson, "When did you find out about the crime?" Anderson looked toward his attorney, who held up some newspaper articles, and responded, "Now"; c) Anderson had previously requested to receive

copies of the articles from his attorney, but was denied; d) Anderson submitted Notice of Appeal, but was not allowed to appeal conviction and sentence.

"STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSION OF LAW".

This portion of this motion for summary judgment is made on the following claims made in GROUND 1:

a) I allege that my court conviction and/or sentence are unconstitutional, in violation of my Sixth Amendment right to effective assistance of counsel based on these facts:
b) Counsel failed to provide trial by jury after judge said he couldn't accept Anderson's plea.
c) Anderson said he didn't commit crimes charged.
d) Counsel failed to prevent continuing collateral consequences and concrete and continuing injury from conviction, with following civil disabilities imposed by operation of law-imposed by federal or state law:
e) (1) petitioner required to register with Las Vegas Metropolitan Police because on parole on Sept. 18, 2008
f) at which time he was informed about another trial to cover up fake judgment in this case at bar.
g) New conviction occurred in Memphis, TN in 1987, carrying a 42-year sentence; trial in absentia, while Anderson was in prison for fictional federal crimes, offense: Explosive Property Destruction, sentence 42 years,
h) (2) petitioner's travel is restricted and he was required to return to Illinois after a week;
i) (3) petitioner is unable to establish a residence and gun sales business in Nevada;

j) (4) requirement to report to Parole Officer when contacted by any law enforcement, when changing employment or other causes as well as reporting monthly;
k) (5) petitioner cannot possess firearms;
l) (6) petitioner cannot have any contact with other convicted felons and must report same, should it occur.
m) Counsel failed to expose national conspiracy involving FBI, BATF, federal and state prosecutors, defense counsels to covering up crimes committed against Anderson and his factual and actual innocence of all crimes,
n) Withholding of exculpatory evidence, denied due process, right to defend himself or contribute to his defense, destruction and or hiding of investigation documents, withholding total discovery.

There are no disputed issues of material fact concerning the first (claim) GROUND 1 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

This portion of this motion for summary judgment is made on the following claims made in GROUND 2:

a) I allege that my court conviction and/or sentence are unconstitutional, in violation of Fifth Amendment right to due process based on these facts:
b) Anderson relies on In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.368 (1970);
c) "Constitutional stature of the reasonable doubt standard, we explicitly hold that the Due Process Clause protects the accused conviction except upon proof beyond a reasonable doubt of every fact

necessary to constitute crime of which he was charged."

d) Anderson is factually and actually innocent of all crime presented in the Indictment and Presentence Reports.

e) Structural error occurred, see McKaskle v. Wiggins, 456 U.S. 168, 177-178, n. 8 (1984), the denial of the right to public trial.

f) The Grand Jury indictment was not signed by Grand Jury Foreman, copy given to Anderson.

g) Anderson told judge he didn't commit crimes and acts charged.

h) Judge said Anderson would have to stand trial.

i) Presentence report stated that had the case gone to trial, prosecutor would have shown that Anderson was affiliated with the Army of God.

j) No evidence was presented.

k) Winship should protect against this court sustaining conviction and judgment.

l) Since the Court stenographer said court notes were destroyed and prosecutor stated that tape recordings were inaudible and all records of the case cannot be found.

m) Following this, a secret trial in absentia was held in Memphis, TN in 1987.

n) While Anderson was in prison, sentenced for fictional crimes.

o) Anderson was not allowed to represent himself or appeal either conviction.

p) Prosecutor never said Anderson committed any specific act or crime alleged in the indictment.

q) Prosecutor withheld total discovery and kidnapped Anderson.

There are no disputed issues of material fact concerning the second (claim) GROUND 2 for relief and,

as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

This portion of this motion for summary judgment is made on the following claims made in GROUND 3:

a) I allege that my court conviction and /or sentence are unconstitutional, in violation of my Article III, Sec.2, Cl.3 right to trial by jury in state where crime was committed, based on these facts:

b) Abuse of Power: Judges constitutional mandate and duty for a judge to have jurisdiction is a Article III, Sect.2, Cl.3. –

c) "The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed."

d) It is government's duty (both specified and implied) to provide trial by jury in all criminal cases, regardless of the wishes of any defendant, defense attorney, prosecutor, or any judge.

e) Anderson never had a trial as required by Article III, Sect.2, Cl.3 in either case, or in any federal or state presentence report used for judgments.

f) Congress has mandated that legal sentences conform with U.S.C.A. Rule 6.

g) The Grand Jury: (b)(2) "The court must not dismiss the indictment on the ground that a grand juror was not legally qualified if the records show that at least 12 qualified jurors concurred in the indictment...(c)...the foreperson will record the number of jurors concurring in every indictment and will file the record with the clerk."

h) All state and federal courts used in presentence reports were unable to provide these records.

i) Therefore, courts did not comply with above.

j) The court acted in complete absence of jurisdiction.

k) Therefore Anderson request that this court, sua sponte, on its own motion and pursuant 2243 which confers on federal courts the discretion to dispose of habeas corpus matters and to tailor remedies as "law and justice require"

l) Order compensation or relief as this court would deem just and proper, if any there be at law, lest Don Benny Anderson, Petitioner, suffer further irreparable injury,

m) and expungement of all government records which are to be turned over to Anderson.

There are no disputed issues of material fact concerning the third (claim) GROUND 3 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

Case 6) 2:08-cv-01578-KJD-DWF, U.S. District Court for the Southern District of Illinois, Alton, IL – Issues of this case: a) Anderson submitted Notice of Appeal, but was not allowed to handle his own trial or appeal of conviction and sentence; b) court-appointed attorney was appointed by judge to handle Anderson's trial and appeal; United States Attorney failed to list this case as being on PACER although it was mailed to the court, FBI and United States Attorney on 11/03/08 so he knew of its existence.

"STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSION OF LAW".

This portion of this motion for summary judgment is made on the following claims made in GROUND 1:

a) I allege that my court conviction and/or sentence are unconstitutional, in violation of my Sixth

Amendment right to effective assistance of counsel based on these facts:

b) Counsel failed to expose court lacked jurisdiction..
c) Counsel failed to prevent continuing collateral consequences and concrete and continuing injury from conviction,
d) with following civil disabilities imposed by operation of law imposed by federal or state law:
e) (1) petitioner required to register with Las Vegas Metropolitan Police;
f) (2) petitioner's travel is restricted and he was required to return to Illinois after a week;
g) (3) petitioner is unable to establish a residence and gun sales business in Nevada;
h) (4) requirement to report to Parole Officer when contacted by any law enforcement, when changing employment or other causes as well as monthly reporting;
i) (5) petitioner cannot possess firearms;
j) (6) petitioner cannot have any contact with other convicted felons and must report same, should it occur.
k) Counsel failed to expose factual and actual innocence, national conspiracies involving FBI, BATF, U.S. Marshals, media, federal and state prosecutors, judges, defense counsels to cover up crimes committed against Anderson.
l) Ineffective assistance of counsel allowed arrest without probable cause,
m) withholding of exculpatory evidence,
n) [and failed to] expose illegal grand jury.
o) Anderson was denied due process, right to represent himself at trial and appeal or contribute to his own defense.

p) Destruction and/or hiding of investigation documents,
q) withholding of total discovery,
r) withholding of previous trial documents,
s) allowing false presentence reports to be created
t) which exerted undue influence on judges at trial, appeal, habeas corpus and subsequent filings regarding FBI, BOP, and U.S. Parole Commission conspiracies involving control over Anderson.
u) Counsel failed to expose perjury,
v) trial errors that infected the trial with unfairness to make conviction denial of due process,
z) Anderson not allowed being present at all meetings.

There are no disputed issues of material fact concerning the first (claim) GROUND 1 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

This portion of this motion for summary judgment is made on the following claims made in GROUND 2:

a) I allege that my court conviction and/or sentence are unconstitutional, in violation of Fifth Amendment right to due process based on these facts:
b) Anderson relies on In re Winship, 397 U>S> 358, 364, 90 S.Ct. 1068, 25 L. Ed.368 (1970);
c) "Constitutional stature of the reasonable doubt standard, we explicitly hold that the Due Process Clause protects the accused conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute crime of which he was charged."
d) Anderson is factually and actually innocent of all crimes presented in the Indictment and Presentence Reports.

e) Federal and State tape recordings and transcripts are void of any evidence showing the Don Benny Anderson is guilty of charged crimes beyond a reasonable doubt standard.

f) Structural defect-the denial of the right to trial by the giving of a defective reasonable doubt instruction. Sullivan v. Louisiana, 508 U.S. 257 (1993).

g) Anderson told Judge Beatty that he knew no crime was committed based on jury instruction. He asked, "How did I commit the crime?" Beatty replied, "I can't tell you."

h) Fictional Judgment was created.

i) Co-defendants were caught on tape in December 1982 stating Anderson was not involved in the crimes.

j) Before Anderson's trial co-defendants were coerced into a plea of guilty to give the public and future jury the impression Anderson was involved, but no evidence was presented which met the reasonable doubt standard.

k) To cover up the kidnapping of Anderson by FBI, U.S. prosecutors, judge;

l) Illegal convictions were created in 1986; Extortion 12 yrs; Conspiracy to Extort 12 yrs.

m) Anderson found out about this trial in absentia on Sept. 18, 2008 when he had to register with Las Vegas Metropolitan Police.

There are no disputed issues of material fact concerning the second (claim) GROUND 2 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

This portion of this motion for summary judgment is made on the following claims made in GROUND 3:

a) I allege that my court conviction and /or sentence are unconstitutional, in violation of my Article III, Sec.2, Cl.3 right to trial by jury in state where crime was committed, based on these facts:

b) Abuse of Power: Judges constitutional mandate and duty for a judge to have jurisdiction is a Article III, Sect.2, Cl.3. –

c) "The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed."

d) It is government's duty (both specified and implied) to provide trial by jury in all criminal cases, regardless of the wishes of any defendant, defense attorney, prosecutor, or any judge.

e) Anderson never had a trial as required by Article III, Sec.2, Cl.3 in this case or any case mentioned any federal or state presentence report used for judgments.

f) Congress has mandated that legal sentences conform with U.S.C.A. Rule 6.

g) The Grand Jury: (b)(2) "The court must not dismiss the indictment on the ground that a grand juror was not legally qualified if the records show that at least 12 qualified jurors concurred in the indictment...

(c)...the foreperson will record the number of jurors concurring in every indictment and will file the record with the clerk."

h) All federal and state courts used in presentence reports were unable to provide these records.

i) Therefore, courts did not comply with above.

j) The court acted in complete absence of jurisdiction.

k) Therefore Anderson requests that this court, sua sponte, on its own motion and pursuant 2243 which confers on federal courts the discretion to dispose of

habeas corpus matters and to tailor remedies as "law and justice require"

l) Order compensation or relief as this court would deem just and proper, if any there be at law,

m) and expungement of all government records which are to be turned over to Anderson,

n) lest Don Benny Anderson, Petitioner, suffer further irreparable injury.

There are no disputed issues of material fact concerning the third (claim) GROUND 3 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

Case 7) 2:08-cv-01579-KJD-GWS 194th Judicial District Court of Dallas County, Dallas, TX -Issues of this case: Anderson entered into agreement with court with the following terms: a) plea of no contest, without being placed under oath; b) no questions asked by judge; c) prosecutor would not present any evidence crime was committed; d) no finding of guilt by the court; e) 2 years probation with agreement all records would be expunged and all records given to Anderson; f) Anderson submitted Notice of Appeal, but was not allowed, to cover up kidnapping by prosecutor, defense counsel, and judge, to appeal conviction and sentence; g) as of this date, records have not been sent to Anderson; h) information about this case has been used in presentence reports and by the courts and U.S. Parole Commission reports, causing continuing collateral consequences and concrete and continuing injury; i) Attorney failed to list this case as being in PACER although it was mailed to the court on 11/04/08 so he already knew of its existence.

"STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSION OF LAW".

This portion of this motion for summary judgment is made on the following claims made in GROUND 1:

a) I allege that my court conviction and/or sentence are unconstitutional, in violation of my Sixth Amendment right to effective assistance of counsel based on these facts:
b) Counsel failed to expose that court lacked jurisdiction;
c) Counsel failed to prevent continuing collateral consequences and concrete and continuing injury from conviction, with following civil disabilities imposed by operation of law-imposed by federal or state law:
d) (1) petitioner required to register with Las Vegas Metropolitan Police because on parole on Sept. 18, 2008
e) (2) petitioner's travel is restricted and he was required to return to Illinois after a week;
f) (3) petitioner is unable to establish a residence and business (gun sales) in Nevada;
g) (4) requirement to report to Parole Officer when contacted by any law enforcement, when changing employment or other causes as well as reporting monthly;
h) (5) petitioner cannot possess firearms;
i) (6) petitioner cannot have any contact with other convicted felons and must report same should it occur.
j) Counsel failed to reveal until after plea that someone had loaned another party money to send me via Western Union;
k) Lending party had not been informed money was to be used to stop foreclosure on property of friend;

l) Ineffective assistance of Counsel allowed arrest without probable cause,
m) withholding of exculpatory evidence,
n) exposing illegal grand jury..
o) Anderson was denied due process,
p) the right to defend himself or contribute to his own defense at trial and appeal.
q) Counsel failed to expose trial errors that infected the plea with unfairness to make conviction denial of due process,
r) Conviction has been used against Anderson in presentence reports and by U.S. Parole Commission in the past.
s) Counsel failed to provide Article III, Sec. 2, CL.3 trial by jury and proof of crime meeting reasonable doubt standard.

There are no disputed issues of material fact concerning the first (claim) GROUND 1 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

This portion of this motion for summary judgment is made on the following claims made in GROUND 2:

a) I allege that my court conviction and/or sentence are unconstitutional, in violation of Fifth Amendment right to due process based on these facts:
b) Anderson relies on In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.368 (1970);
c) "Constitutional stature of the reasonable doubt standard, we explicitly hold that the Due Process Clause protects the accused conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute crime of which he was charged."

d) Don Benny Anderson is factually and actually innocent of crime charged;
e) State tape recording and transcript are void of evidence showing Anderson is guilty of charged crimes beyond a reasonable doubt standard.
f) Structural error occurred, see McKoskle v. Wiggins, 456 U.S. 168, 177-78, n. 8 (1984), the denial of the right to public trial.
g) No lawful Grand Jury of 12 or more qualified jurors concurred in Indictment, U.S.C.A. Rule 6.
h) The court acted in the complete absence of all jurisdiction.
i) No Due Process.
j) Court created an unlawful conviction, sentence and judgment.
k) Therefore, Anderson requests that this court, sua sponte, on its own motion and pursuant to 2243, which confers on federal courts the discretion to dispose of habeas corpus maters and to tailor remedies "as law and justice require" order compensation or relief as this court would deem just and proper.
l) See case of Ervin McGee, Jr. v. City of Tulsa (2007) where $14.5 million awarded for wrongful conviction and imprisonment.
m) Petition further requests expungment of all government records concerning this case;
n) With all records to be turned over to Anderson.
o) Lest Don Benny Anderson, Petitioner, suffer further injury.

There are no disputed issues of material fact concerning the second (claim) GROUND for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

This portion of this motion for summary judgment is made on the following claims made in GROUND 3:

a) Abuse of Power: Judges constitutional mandate and duty for a judge to have jurisdiction is a Article III, Sect.2, Cl.3. –

b) "The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed."

c) It is government's duty (both specified and implied) to provide trial by jury in all criminal cases, regardless of the wishes of any defendant, defense attorney, prosecutor, or any judge.

d) Anderson never had a trial as required by Article III, Sect.2, Cl.3 in this case.

e) Congress has mandated that legal sentences conform with U.S.C.A. Rule 6.

f) The Grand Jury: (b)(2) "The court must not dismiss the indictment on the ground that a grand juror was not legally qualified if the records show that at least 12 qualified jurors concurred in the indictment...(c)...the foreperson will record the number of jurors concurring in every indictment and will file the record with the clerk."

g) Since there was no lawful Grand Jury, court did not comply with above.

There are no disputed issues of material fact concerning the third (claim) GROUND 3 for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

Case 8) 2:08-cv-01239-RCJ-(LRL), U.S. District Court District of Nevada, Las Vegas, NV - a) Petitioner filed Petition for Writ of Habeas Corpus

and subsequent Motion to Expedite, which named United States Parole Commission as Respondent; b) on October 24, 2008, court ordered that the Petition for Habeas Corpus be DISMISSED, Motion to Expedite be DENIED as moot and judgment entered for Respondent; c) no record of any response by Respondent was presented; d) Judge and clerk acted together to deny Anderson the 10-day period to appeal as allowed under Rule 59E, "A motion to alter or amend a judgment must be filed no later than 10 days after the entry of the judgment."; e) Anderson was prevented by said judgment to respond to the order, demonstrating the obvious bias of Judge Robert C. Jones; f) THE SOLE ISSUE RAISED IN THE ORIGINAL WRIT OF HABEAS CORPUS IS WHETHER THE UNITED STATES PAROLE COMMISSION HAD ARTICLE III JUDICIAL AUTHORITY TO ISSUE SENTENCE.

Following is the Plaintiff's affidavit, which was sent to James C. Mahan, U.S. District Judge, in Case No: 2:08-cv-01256-JCM-LRL, in Plaintiff's MOTION TO EXPEDITE AND AMEND WRIT OF HABEAS CORPUS, pgs. 14-22, on October 6, 2008. Certificate of Service shows that this motion was also sent to the United States Attorney and Federal Bureau of Investigation – Las Vegas.

AFFIDAVIT OF DON BENNY ANDERSON
IN SUPPORT OF MOTION TO EXPEDITE AND
AMEND WRIT OF HABEAS CORPUS
(Case No. 2:08-cv-01256, beginning page 14)

TITLE 18 SECTION 1621 UNSWORN DECLARATIONS OF EVIDENCE UNSWORN AFFIDAVIT/ DECLARATIONS UNDER THE PENALTY OF

PERJURY PURSUANT TO TITLE 28 U.S.C. SECTION 1746 COVERING OHER CRIMES NOT MENTIONED IN CONVICTED PERSONS QUESTIONAIRE.

1. My name is DON BENNY ANDERSON. I am sixty-seven (67) years of age, having been born on December 19, 940 in Springfield, Illinois;
2. I am of sound mind and fully competent to make this Affidavit/Declarations under the penalty of perjury;
3. This Affidavit/Declarations must stand for Truth and Fact, unless challenged point-for-point by an opposing Affidavit/Declarations drawn under the same terms and conditions as this instrument;
4. This Affidavit/Declarations will stand for Truth and fact before United States District Court, District of Nevada, in this Writ of Habeas Corpus;
5. This Affidavit/Declarations is made on personal knowledge and set forth facts that are admissible evidence;
6. Anderson declares the source of information relied on is unaltered court tape recordings and perfect transcripts made from them, without omissions or inaudible portions from the following court cases to reveal that he is a victim of political kidnapping and was kidnapped in violation of Title 18 Section 1201; a victim of domestic terrorism in violation of Title 18 Section 2331; in forced labor in violation of Title 18 Section 1589, in involuntary servitude in violation of Title 18 Section 1584; and victim in respect of peonage, slavery involuntary servitude, or forced labor in violation of Title 18 Section 1590; a victim of a conspiracy against rights in violation of Title 18 Section 141; and a victim of deprivation of rights under color of law in violation of Title 18 Section 242, and totality of all federal and state court and federal

state agencies and agents records and agents information concerning the following cases:

A) 194th Judicial District Court of Dallas County, Dallas, Texas, Cause No. F78-483NM;

B) 284th Judicial District Court of Harris County, Houston, Texas, Cause No. 315053;

C) United States District Court for the Southern District of Illinois, Cause No. 82-CR-50031;

D) Circuit Court – Pinellas County, Clearwater, Florida, Cause No. CRC 83- 02708CFANO;

E) United States District Court for the Eastern District of Virginia, Cause No. 83-00159-A;

7. Anderson never heard or saw nor has knowledge of any evidence presented in any court by any prosecutor proving he committed fabricated charges as alleged in the charging instruments and knows that none ever existed and cannot be produced;
8. Anderson was constructively without counsel at trial and on appeal;
9. All counsels rendered Ineffective Assistance of Counsel and were incompetent;
10. Counsels were ineffective and incompetent not receiving total discovery for themselves and providing same information to Anderson;
11. Counsels were ineffective and incompetent for not exposing lack of probable cause to believe Anderson committed crimes as alleged;
12. Counsels were ineffective and incompetent for not exposing that prosecution had kidnapped Anderson without proof of guilt or meeting the Supreme Court standard of proof beyond a reasonable doubt requirement.
13. Counsels were ineffective and incompetent by not ensuring Anderson enjoyed the right to a speedy and public trial by impartial jury, as mandated by the

Sixth Amendment to the Constitution for the United States of America;

14. Counsels were ineffective and incompetent by not ensuring Anderson had a trial by jury in a state where a crime was committed, so the court could have lawful jurisdiction and fair trial held, as mandated, by the United States Constitution for America, Article III, Section 2, Clause 3;
15. Counsels rendered ineffective assistance of counsel and were incompetent by not telling judge he was not being impartial, in open court, on the record;
16. Counsels rendered ineffective assistance of counsel and were incompetent by not telling judge in open court, on the record, that the judge knowingly and willingly sentenced Don Benny Anderson without prosecution ever proving alleged case nor meeting the reasonable doubt standard mandated by the Supreme Court, In re Winship;
17. Counsels rendered ineffective assistance of counsel and were incompetent for not preserving transcripts and court tape recordings so they could never be destroyed;
18. Counsels rendered ineffective assistance of counsel and were incompetent for not appealing the above issues;
19. Writ of habeas corpus should be issued on basis of any one of the declarations mentioned in this affidavit as well as prosecutor's comments during grand jury, hearings, court meetings, trial, closing, and sentencing that so infected trial with unfairness as to make manufactured fictional conviction(s), a denial of due process.
20. All court proceedings were fundamentally unfair;
21. All courts listed in declaration 6 acted in the complete absence of all jurisdiction in sentencing Anderson;

22. The judgments of the above listed courts are legally and constitutionally null and void for Want of Jurisdiction;
23. Anderson is factually and actually innocent of all crimes charged in federal and state charging instruments;
24. The Supreme Court has decreed that the Due Process Clause requires the prosecution prove beyond a reasonable doubt every fact that constitutes the offense charged;
25. Federal and state prosecutors prosecuted Anderson knowing that they could not prove beyond a reasonable doubt every fact that constitutes the fictional offenses charged;
26. Anderson was brought up on bogus charges before controlled grand juries, which were dupes and rubber stamps for lying prosecutors;
27. Anderson was coerced into having incompetent counsel represent him in lawless federal and state courts;
28. Anderson gave notice to all federal and state courts that he was going to represent himself; yet actions of prosecutor, judge, and counsel made that impossible;
29. No federal or state prosecutor can give Anderson full discovery of all federal and state records because nationwide conspirators will not expose a national conspiracy to frame him on bogus offenses;
30. No evidentiary hearing can be held with any prosecutor presenting proof beyond a reasonable doubt every fact that constitutes the offense charged;
31. Anderson was convicted for non-offenses and illegally sentenced and imprisoned;
32. Anderson was denied Due Process because the FBI will fail to prove that a lawfully impaneled Grand Jury with 12 legally qualified jurors concurred to the fictional indictments, either federal or state. No

foreperson or deputy ever recorded the number of jurors concurring or filed with the clerk. All judges refused to provide this document;

33. "No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury;
34. FBI will fail to provide unaltered court tape recordings and perfect transcripts made from them from any court proving Anderson committed the crimes as charged meeting the reasonable doubt standard;
35. Respondents will fail to provide totality of transcripts and tape recorded records. "No person...shall be compelled in any criminal case to be a witness against himself."
36. The FBI will fail to prove Beyond a Reasonable Doubt from the totality of all state and federal records that All court sentences, both state and federal, are valid; they were rendered without jurisdiction;
37. Don Benny Anderson is constitutionally, statutorily, legally, factually and actually innocent of all federal and state charges as alleged in the charging instruments;
38. Exhibit A claims that Anderson was convicted of Extortion and Conspiracy to Extort, and received a sentence of 24 years total in Alton, Illinois. Anderson is declaring, under penalty of perjury, that he was never convicted of Extortion and he never received a total of 24 years from the court in Alton;
39. Exhibit A shows that Anderson received for Explosive Property Destruction, 42 years in Memphis, Tennessee;
40. Exhibit A claims that Anderson was convicted of 2 counts of Arson in Clearwater, Florida, and received a 30 yr. sentence. Anderson was never lawfully

convicted in Florida in an Article III trial. Anderson was never put on trial under oath; evidence was never presented. Order FBI to provide trial transcripts if any exist.

41. In the matter of the United States District Court for the Eastern District of Virginia, Cause No. 83-00159-A, it charged that Anderson was unlawfully and knowingly involved, with co-conspirators, in the making of firearms, including explosive bombs, that were used to destroy buildings and personal property used in performing abortions and to otherwise interfere with the performance of abortions. The Judge hearing this case refused to accept a plea, with Anderson claiming he did not commit any of the acts or crimes mentioned in the indictment.

The judge ordered Anderson to stand trial; subsequently the Prosecutor, Kenneth E. Melson, ordered into the record that Anderson's plea was accepted. The presentence report quoted the Prosecutor as saying that had the case gone to trial, they would have shown that the defendant was affiliated with an organization called the "Army of God". Judgment and Probation/Commitment Order reports that the defendant was found guilty of three counts, ranging from Interstate transport to commit arson, damaging a building by explosion, and conspiracy.

Obviously Anderson was not given a trial by jury as required Article III.

Anderson relies on, Article III, Section 2, Clause 3 of the Constitution,

Federal and state court jurisdictional requirement clause which mandates, "The Trial of all Crimes, except in cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed".

Anderson also relies on, In re Winship, 397 U.S. 358 (1970), "We explicitly hold that the Due Process Clause protects the accused conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged";

42. Anderson gave notice to all courts that he was going to appeal, himself, but courts denied him this right and never provided transcripts.
43. The court is justified on issuance of a writ of habeas corpus. Anderson has demonstrated that claims could not have been raised on direct appeal, that convictions produce lingering civil disabilities and the errors complained of herein are the type of defect that would justify habeas corpus relief;
44. Don Benny Anderson relies on our nation's inspired Trump Card; WE THE PEOPLE of the United States . . . Constitution for the United States of America [Preamble].
45. Pursuant to 28 U.S.C. Section [2243], this court is to take allegations as true except to the extent that judge finds from the evidence that they are not true;
46. The penalty for perjury is five (5) years;
47. In America, the law is King. – Thomas Paine
48. Truth is Sovereign in Law

FURTHER DON BENNY ANDERSON SAYETH NAUGHT.

Signed under Title 28 U.S.C. Section 1746 on this 6th day of October 2008.

s/ Don B. Anderson
Don Benny Anderson
2004 ½ S. Noble Avenue
Springfield, Illinois 62704
217 670-0194

GOVERNMENT CLAIMS THE FOLLOWING:

A. Factual and Procedural Background

1. **"Respondent cannot make any representations concerning the factual background of Petitioner's case because Petitioner has not alleged that he has been convicted in a federal crime in the District of Nevada."**
Rebuttal:
   a) Affiant/Plaintiff's response is that the United States Parole Commission is the Respondent;
   b) Government is counsel for USPC;
   c) Government with criminal intent falsified the caption on its motion;
   d) Affiant was prejudiced by Judge James C. Mahan language and Order calculated to booby trap Plaintiff, dated October 8, 2008;
   e) Judge Mahan booby trapped Affiant into using court' approved forms and language in caption on his writs stating the following;
   f) Don Benny Anderson vs. Federal Bureau of Investigation, et. al.;
   g) Judge James C. Mahan wanted the caption to read as follows based on his ORDER, case number 2:08-cv-1256-JCM-LRL, dated the 8th day of October, 2008:
   h) DON BENNY ANDERSON, Plaintiff, vs. FEDERAL BUREAU OF INVESTIGATION et al., Defendants.

i) The Federal Bureau of Investigation was not designated as respondent by Anderson.

j) Actual respondent is the United States Parole Commission, based on UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, CA9 Docket No.: 08-17603; Agency Number No: 2:08-cv-01239-RCJ-LRL; Short Title: Don Anderson v. USPC; D.C. No. 2:08-cv-01239-RCJ-LRL indicated on United States Court of Appeals for the Ninth Circuit Time Schedule Order. Filed Dec. 01, 2008;

k) There is a genuine issue necessary to be litigated.

l) Government claimed the following :

2. "Moreover, Respondent cannot find any record of a federal prosecution in this District naming Petitioner as a defendant."

Rebuttal:

a) Affiant agrees with this statement.

b) However, it is irrelevant to this matter and exists as a genuine issue necessary to be litigated.

3. "PACER lists five separate cases that Petitioner has initiated in this district in 2008."

Rebuttal:

a) Affiant questions this statement.

b) There exists as a genuine issue necessary to be litigated.

4. On September 19, 2008, Petitioner filed a self-styled "Writ of Habeas Corpus" in Case No. 2:08-cv-01256-JCM-LRL, naming the Federal

Bureau of Investigation ("FBI") as the respondent.

Rebuttal:

a) Affiant agrees.

b) Clerk or Judge should have ordered the writ captioned correctly just as UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT has done

c) Petitioner was prejudiced;

d) There is a genuine issue necessary to be litigated.

5. On October 28, 2008, Petitioner filed an amended form petition for habeas corpus in Case No. 2:08-v-01486-RCJ-PAL, naming the FBI and unspecified others as respondent(s).

Rebuttal:

a) Affiant agrees.

b) Judge ordered Affiant to use a court booby trapped form and captioning by Judge was deliberately booby trapped so corrupt judicial officials and government could use it in their favor.

c) Clerk or Judge should have ordered the writ captioned correctly just as UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT has done.

d) Petitioner was prejudiced;

e) There is a genuine issue necessary to be litigated

6. "On October 31, 2008, Petitioner filed an amended form petition for habeas corpus in Case No. 2:08-cv-01501-KJD-GWF, naming the FBI and unspecified others as

respondent(s)." (See page 2 of Government's motion).

Rebuttal: Plaintiff was required to use form provided. The form has printed on it Respondent. Judge James C. Mahan wants the caption to read as follows based on his ORDER, case number 2:08-cv-1501-KJD-GWF, dated the 8th day of October, 2008. DON BENNY ANDERSON, Plaintiff, vs. FEDERAL BUREAU OF INVESTIGATION, et al., Defendants. Apparently Judge Mahan does feel a respondent needs to be designated. There is a genuine issue necessary to be litigated.

7. "On November 4, 2008, Plaintiff filed another form petition for habeas corpus in Case No. 2:08-cv-01514-JCM-GWF, again naming the FBI and unspecified others as respondent(s)." (See page 2 of Government's motion).

Rebuttal: Plaintiff was required to use form provided. The form has printed on it Respondent. Judge James C. Mahan wants the caption to read as follows based on his ORDER, case number 2:08-cv-1514-JCM-GWF, dated the 8th day of October, 2008. DON BENNY ANDERSON, Plaintiff, vs. FEDERAL BUREAU OF INVESTIGATION, et al., Defendants. Apparently Judge Mahan does feel a respondent needs to be designated. There is a genuine issue necessary to be litigated

8. "Yet another petition for writ of habeas corpus, which Plaintiff filed on September 17, 2008 in Case No. 2:08-cv-01239-RCJ-LRL, named he

United States Parole Commission as the respondent. The petition in that case was dismissed summarily by a Clerk's Judgment dated and filed October 24, 2008." (See page 2 of Government's motion).

Rebuttal: Plaintiff disagrees with this issue. Petition for writ of habeas corpus, Case No. 2:08-cv-01239-RCJ-LRL,was ordered DENIED by Judge Robert C. Jones on October 24, 2008 and decision was recorded by Lance S. Wilson, Clerk on the same date. By their actions, plaintiff was denied the 10-day period for appeal as provided for in Rule 59E, "A motion to alter or amend a judgment must be filed no later than 10 days after the entry of the judgment."

9. "The United States Attorney has received two additional, yet-undocked petitions naming "Federal Bureau of Investigation et al. as respondents." (See page 2 of Government's motion).

Rebuttal: Plaintiff was required to use form provided. The form has printed on it Respondent. Judge James C. Mahan wants the caption to read as follows based on his ORDER. DON BENNY ANDERSON, Plaintiff, vs. FEDERAL BUREAU OF INVESTIGATION, et al., Defendants. Apparently Judge Mahan does feel a respondent needs to be designated. There is a genuine issue necessary to be litigated

10. "The petitions in all of the above-referenced cases purport to be brought under 18 U.S.C. [Section] 2241." (See page 2 of Government's motion).

Plaintiff agrees with this statement. This issue does not require litigation.

Analysis (See page 2 of Government's motion).

A.. "The above-captioned cases should be dismissed for lack of jurisdiction and/or improper venue." (See page 2 of Government's motion).
Plaintiff disagrees with this statement. There are many issues necessary to be litigated, as mentioned above.

B. "Petitioner does not allege to have been, nor does he appear to have been, convicted of a federal crime in the District of Nevada." (See page 2 of Government's motion).
Rebuttal: Anderson agrees with this statement. However, it is irrelevant to this matter and exists as a genuine issue necessary to be litigated. See IDEMA v. RICE, 478 F.Supp.2d 47 (D.D.C.2007).

C.. "Consequently, to the extent Petitioner appears to be seeking relief under 28 U.S.C. [Section] 2255, this Court lacks jurisdiction to review the petition or grant relief.
Plaintiff disagrees with this statement. As the Gregory A. Brower, U.S. Attorney, so eloquently stated above in A. Factual and Procedural Background, of Government's Motion, the petitions in all of the above-referenced cases purport to be brought under 18 U.S.C. [Section] 224l."

(See 28 U.S.C. [Section] 2255 (a prisoner can bring a motion under Section 2255 by "mov[ing] *the court which imposed the sentence*" to vacate, set aside, or correct it) (emphasis added); *Hernandez v, Campbell,* 204 F.3d 861, 866 (9th Cir. 2000); *Short v. United States,* 504 F.2d 63, 65, (6th Cir. 1974). (See pages 2 and 3 of Government's motion).

This statement is irrelevant. This a Section 2241 issue and exists as a genuine issue necessary to be litigated.

D. "Petitioner does not allege to be, nor does he appear to be, in custody in the District of Nevada.

Anderson agrees that he was not in the custody of the District of Nevada, but was under the control of the U. S. Parole Commission while in Nevada and filed a PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2241 by a person in custody.

This statement is irrelevant. This a Section 2241 issue and exists as a genuine issue necessary to be litigated.

E. Consequently, venue is improper for a claim under Section 2241. *United States v. Hayman, 342 U.S. 205, 213 (1952).* (See page 3 of Government's motion).

At the time original writ of habeas corpus was filed in this court, Don Benny Anderson was residing with Kay Dahlgren at 8724 Litchfield Ave., Las Vegas, NV 89134, with intentions of establishing a permanent residence there and opening a business. This court had jurisdiction because the Convicted Persons Questionnaire (See Exhibit C), was presented for signature when registering with Las Vegas Metropolitan Police, since he was on parole, and because the court had not yet ruled on Case 2:08-cv-01239-RCL-LRL. Petitioner would still be residing in Las Vegas if he had not been forced to return to Illinois, and plans to live in Nevada with Ms. Dahlgren and establish a gun sales business, as plainly stated in all petitions. Anderson requested an immediately decision in order to remain in Nevada so that he would not be compelled to return to Illinois.

This statement is irrelevant. The above cited case is irrelevant and not on point. Anderson relies on *Idema v. Rice.* This Court has venue in this matter. This is a Section 2241 issue and exists as a genuine issue necessary to be litigated.

F. "Finally, Petitioner does not allege to be, nor does he appear to be, in the custody of the FBI." (See page 3 of Government's motion).

Anderson never claimed to be in the custody of the FBI. Since Anderson claimed that he was in custody and filed a PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2241 by a person in custody, Government should have looked to the facts of the case to determine who the Respondent would truly be. Ground 1 in Petitioner's PETITION FOR A WRIT OF HABEAS CORPUS clearly reveals that U.S. Parole Commission would be the Respondent because they claim they have jurisdiction over Anderson and as result he had to report to Las Vegas Metropolitan Police and make reports to Parole Officer. Plaintiff argues that he is in the actual custody and control of the U.S. Parole Commission. There exists a genuine issue necessary to be litigated because of the fraudulent claim above.

G Consequently, there is no cognizable claim for relief against the named defendant under Section 2241 or 2255. (See page 3 of Government's motion).

Defendant(s) were not specified in this motion. The Judge, by his order, named defendant as FEDERAL BUREAU OF INVESTIGATION, et. al.

This exists as a genuine issue necessary to be litigated.

H. "*Runsield v. Padilla*, 426, 447 (2006) ("Whenever a [Section] 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent

and file the petition in the district of confinement.". (See page 3 of Government's motion).

Anderson does not claim to be confined with a warden. Anderson relies on *Idema v. Rice.* This Court has venue to hear this Writ. This issue is irrelevant and there exists a genuine issue necessary to be litigated.

I. "Petitioner's decision to treat the FBI as his "warden" by naming the FBI as respondent is also fatal to jurisdiction." (See page 3 of Government's motion).

Anderson never claimed to be in the custody of the FBI. Since Anderson claimed that he was in custody and filed a PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2241 by a person in custody, Government should have looked to the facts of the case to determine who the Respondent would truly be. Ground 1 in Petitioner's PETITION FOR A WRIT OF HABEAS CORPUS clearly reveals that U.S. Parole Commission would be the Respondent because they claim they have jurisdiction over Anderson and as result he had to report to Las Vegas Metropolitan Police and make reports to Parole Officer. Respondent argues that he is in the actual custody and control of the U.S. Parole Commission. There exists a genuine issue necessary to be litigated because of the fraudulent claim above.

J. "Because the petitioner in Padilla filed his petition in a different district that that of his actual "warden," the Court held that the district court lacked jurisdiction to hear it. *Id."* (See page 3 of Government's motion).

Anderson does not claim to be confined with a warden. Anderson relies on *Idema v. Rice, 478 f.Supp.2d 47 (D.D.C 2007)* This Court has jurisdiction to hear this Writ. The issue is relevant

and there exists a genuine issue necessary to be litigated.

K. **Further, Similarly Frivolous Petitions Should Be Prohibited (See page 3 of Government's motion).**

"As demonstrated above, plain defects in jurisdiction and venue make clear that no post-conviction relief petition filed by Petitioner is this district can ever progress to an adjudication on the merits." (See page 3 of Government's motion).

At the time original writ of habeas corpus was filed in this court, Don Benny Anderson was residing with Kay Dahlgren at 8724 Litchfield Ave., Las Vegas, NV 89134, with intentions of establishing a permanent residence there and opening a business. This court had jurisdiction because the Convicted Persons Questionnaire (See Exhibit C), was presented for signature when registering with Las Vegas Metropolitan Police, since he was on parole, and because the court had not yet ruled on Case 2:08-cv-01239-RCL-LRL. Petitioner would still be residing in Las Vegas if he had not been forced to return to Illinois, and plans to live in Nevada with Ms. Dahlgren and establish a gun sales business, as plainly stated in all petitions. Anderson requested an immediately decision in order to remain in Nevada so that he would not be compelled to return to Illinois.

Because Affiant, who is currently serving a sentence that was enhanced on the basis of a prior conviction is still in custody, he may challenge the enhancing conviction as constitutionally invalid even though the prior conviction's original custodial term has expired;

Affiant can collaterally attack the validity of a previous conviction used to enhance United States

Parole Commission sentence obtained in violation of right to self-representation or right to counsel;
Court cannot grant summary judgment for Government's motions because summary judgment is improper where the slightest doubt remains about the facts.

See Rand v Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998; Purpose of a motion for summary judgment is to head off a full-scale trial by conducting a trial in miniature, on affidavits, so that not submitting affidavits is the equivalent of not presenting any evidence at trial. See Rand v Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998;

Government never submitted any affidavits with its motions; therefore, never presented any evidence at trial;

Plaintiff agrees with this statement. There exists a genuine issue necessary to be litigated.

L. "Consequently, the petitions are frivolous. Therefore, in order to preserve judicial and executive branch resources, and to prevent further abuse of judicial process, Respondent moves this Court to issue an Order directing the Clerk of this Court to strike any further petitions or pleadings (1) filed by Petitioner and (2) which appear to arise out of conviction(s) and/or sentence(s) imposed in other jurisdictions, or claims arising in other jurisdictions." (See page 3 of Government's motions).
It is apparent that the originally submitted motion presented by government defendants failed to comply with the requirements of Local Rule 56.1, and accordingly the motion was improperly filed and should be dismissed.

Local Rule 56.1 requires a Concise Statement setting forth each fact material to the disposition of the motion which the party claims is or is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, or other evidence upon which the party relies. Plaintiff found no Concise Statement to which to present a rebuttal of fact, but attempted to respond to the vagaries of the government's motion (SEE CONCISE STATEMENT OF UNDISPUTED MATERIAL FACTS IN EACH CASE LISTED ABOVE).

Local Rule 56.1 does anticipate an ability for a moving party to have the facts concisely summarized so that the responding party may have an opportunity to concisely rebut same. Failure to do so prejudices not only the responding party, but this honorable Court as well. It is therefore requested that the GOVERNMENT'S MOTION TO DISMISS PETITIONS FOR WRIT OF HABEAS CORPUS, AND TO PROHIBIT PETITIONER FROM FILING ANY FURTHER PETITIONS FOR HABEAS CORPUS IN THE DISTRICT OF NEVADA be stricken for failing to comply with Local Rule 56.1.

a) Conclusion (See page 4 of Government's motions).

M. "The petitions filed in the above-captioned cases should be dismissed for lack of jurisdiction and improper venue." (See page 4 of Government's motion.)

This petition should not be dismissed. This Court Does have jurisdiction and venue. Anderson relies on *Idema v. Rice, 478 f.Supp.2d 47 (D.D.C 2007)* There exists a genuine issue necessary to be litigated.

N. "Further filings by Petitioner, based on his conviction(s) and/or sentence(s) imposed in other jurisdictions, should be stricken as frivolous." (See page 4 of Government's motion.)

Plaintiff's filings are not frivolous. It has been shown that this court has jurisdiction to require Government to respond to Plaintiff's motion. Equitable remedies that the court can provide in habeas cases include an order freeing a plaintiff from penalties resulting from conviction that persists beyond the end of detention.

This Court should be deeply troubled by the allegations raised in the habeas petition and various subsequent filings regarding the level of United States Parole Commission and Federal Bureau of Investigation's control over plaintiff's arrests, convictions, appeals, and confinement. These facts are alleged in a habeas petition and later statement of fact and affidavits that have all been verified as true and correct by petitioners under penalty of perjury.

This Court cannot simply ignore plaintiff's alleged facts and find that it lacks jurisdiction without any response to these troubling facts by defendants. In Idema v. Rice, respondents invited the Court to seek further information from defendants regarding the facts in the case. In this case, Government (defendants) demanded that this matter be tried by motion. And the Court, in concert with defendants, has compelled Anderson to answer Government's motion for summary judgment. Accordingly, the defendants shall respond to plaintiff's factual allegations and show cause why this Court should not grant summary judgment in Anderson's favor and grant writ of habeas corpus to plaintiff.

"DATED this 13th day of November, 2008. Respectfully Submitted, GREGORY A. BROWER, United States Attorney /s/ Robert L. Ellman ROBERT L. ELLMAN Assistant U.S. Attorney District of Nevada". (See page 4 of Government's motion.)

FURTHER DON BENNY ANDERSON SAYETH NAUGHT.

Signed under Title 28 U.S.C. Section 1746 on this 19th Day of December, 2008.

s/ Don B. Anderson
Don Benny Anderson
2500 Moultrie Avenue
Mattoon, Illinois 61938
217 234-3988

CONCLUSION

It has been shown that this court has jurisdiction to require Government to respond to Plaintiff's motion. Equitable remedies that the court can provide in habeas cases include an order freeing a plaintiff from penalties resulting from conviction that persists beyond the end of detention and appropriate compensation.

This Court should be deeply troubled by the allegations raised in the habeas petition and various subsequent filings regarding the level of United States Parole Commission and Federal Bureau of Investigation's

control over plaintiff's arrests, convictions, appeals, and confinement. These facts are alleged in a habeas petition and later statement of fact and affidavits that have all been verified as true and correct by petitioners under penalty of perjury.

This Court cannot simply ignore plaintiff's alleged facts and find that it lacks jurisdiction without any response to these troubling facts by defendants. In Idema v. Rice, respondents invited the Court to seek further information from defendants regarding the facts in the case. In this case, Government (defendants) demanded that this matter be tried by motion. And the Court, in concert with defendants, has compelled Anderson to answer Government's motion for summary judgment. Accordingly, the defendants shall respond to plaintiff's factual allegations and show cause why this Court should not grant summary judgment in Anderson's favor and grant writ of habeas corpus to plaintiff with compensation, relief and expungment of all State and Federal records to be turned over to Anderson, lest Don Benny Anderson, Plaintiff, suffer further irreparable injury.

Respectfully Submitted,

s/ Don B. Anderson
Don B. Anderson

CERTIFICATE OF SERVICE

I, Don Benny Anderson, do swear or declare that on this 19th day of December 2008, I have served this PETITIONER-PLAINTIFF'S REBUTTAL TO GOVERNMENT'S DELIBERATELY COMBINED MOTION TO DISMISS PETITIONS FOR WRIT OF HABEAS CORPUS, AND TO PROHIBIT PETITIONER FROM FILING ANY FURTHER PETITIONS FOR HABEAS CORPUS IN THE DISTRICT OF NEVADA AND PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS -WAS TIMELY SENT-CLERK RETURNED IT STATING "YOU MUST HAVE AN ORIGINAL MOTION FOR EACH CASE YOU HAVE."

ORIGINAL MOTION FOR SUMMARY JUDGEMENT AND TO DISMISS NO: 2:08-cv-01256-JCM-LRL

on the following parties to this proceeding, by depositing it in an envelope containing the above document in the United States mail properly addressed and with first-class postage prepaid.

The name and address of parties served is a follows:

United States Attorney
333 Las Vegas Blvd S, #5000
Las Vegas, NV 89101

Clerk, U.S. District Court
District of Nevada
333 Las Vegas Boulevard South
Room 1334
Las Vegas, NV 89101

Signed pursuant to Title 28 U.S.C. Section 1746.

s/ Don B. Anderson
Don Benny Anderson
2500 Moultrie Avenue
Mattoon, Illinois 61938
217 234-3988

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DON BENNY ANDERSON
Appellant

9th Cir. Case No. 09-16311

District Court Case No. 2:08-cv-01256-JCM-LRL

vs. Short Title: Don Anderson v. FBI

UNITED STATES PAROLE COMMISSION
Appellee

APPELLANT'S INFORMAL BRIEF

1. Jurisdiction
   a. Timeliness of Appeal:
      (i) Date of entry of judgment or order of lower court: April 28, 2009
      (ii) Date of service of any motion made after judgment (other than fees and costs): Order not mailed until May 11, 2009. Order received in Mattoon, Illinois on June 15, 2009
      (iii) Date of entry of order deciding motion _____
      (iv) Date notice of appeal filed June 18, 2009
      (v) For prisoners, date you gave notice of appeal to prison authorities_____

B. IF POSSIBLE, PLEASE ATTACH ONE COPY OF EACH OF THE FOLLOWING:

1. The order from which you are appealing
2. The district court's entry of judgment
3. The district court docket sheet

2. What are the facts of your case?

TITLE 18 SECTION1621 UNSWORN DECLARATIONS OF EVIDENCE UNSWORN AFFIDAVIT/ DECLARATIONS OF DON BENNY ANDERSON UNDER THE PENALTY OF PERJURY PURSUANT TO TITLE 28 U.S.C. SECTION 1746 PRESENTS THE FOLLOWING CONCISE STATEMENT SETTING FORTH EACH FACT MATERIAL TO THE DISPOSITION OT THIS MOTION

1) My name is DON BENNY ANDERSON. I am sixty- eight years of age, having been born on December 19, 1940, in Springfield, Illinois;
2) I am of sound mind and fully competent to make this Affidavit/Declarations under the penalty of perjury;
3) This Affidavit/Declarations must stand for Truth and Fact, unless challenged point-for-point by an

opposing Affidavit/Declarations drawn under the same terms and conditions as this instrument;

4) This Affidavit/Declarations will stand for Truth and fact before United States Court of Appeal for the Ninth Circuit;
5) This Affidavit/Declarations is made on personal knowledge and sets forth facts that are admissible evidence;
6) Appellant filed a WRIT OF HABEAS CORPUS with the United States District Court District of Nevada, filed September 18, 2008;
7) Appellant filed a MOTION TO EXPEDITE AND AMEND WRIT OF HABEAS CORPUS on October 6,
2008;

Continued on Page 6

3. What did you ask the district court to do (for example, award damages, give injunctive relief, etc.)?

Move the court to dismiss Government's motions and for summary judgment in al cases mentioned herein in Appellant's favor;

Expungment of all government records, which are to be turned over to Anderson;

Anderson asks the court pursuant to 2243 to provide compensation and relief as is deemed just and proper, if any there be at law, least Don Benny Anderson, petitioner, suffer further irreparable injury. See *Ervin McGee, Jr. v. City of Tulsa (2007)* Where $14.5 million awarded for wrongful conviction and imprisonment.

4. State the claim or claims you raised at the district court.

See claims raised at district court, beginning on page 8.

5. What issues are you raising on appeal?

See issues raised on appeal, beginning on Page 8.

6. Did you present all these issues to the district court?

Yes If not, why?
Yes/No

7. What law supports these issues on appeal? (You may, but need not, refer to cases and statutes.)

Constitution for the United States
28 U.S.C. § 2241 Title 18 Section 1201
28 U.S.C. § 2243 Title 18 Section 2331

28 U.S.C. § 1746 Title 18 Section 1589
Title 18 Section 1584 Title 18 Section 241
Title 18 Section 1590 Title 18 Section 242
Title 18 Section 1621

8. Do you have any other cases pending in this court? If so, give the name and docket number of each case.

CA9 Docket No.: 08-17603
Agency Number: 2:08-cv-01239-RCJ-LRL
Short Title: Don Anderson v. USPC

9. Have your filed any previous cse which have been decided by this court? If so, give the name and docket number of each case.

No

10. For prisoners, did you exhaust all administrative remedies for each claim prior to filing your complaint in the district court?

7/30/09
DATE

s/ Don B. Anderson
SIGNATURE

Don Benny Anderson
2500 Moultrie Avenue
Mattoon, Illinois 61938-2528
ADDRESS

8) FBI, knowing no lawful convictions occurred, manufactured Extortion offense allegedly occurring in 1986 (in Alton, IL) with a sentence of 12 years and a Conspiracy to Extort offense occurring in 1986 with a sentence of 12 years (Page 13, item 10 of MOTION TO EXPDITE AND AMEND WRIT OF HABEAS CORPUS.
9) The FBI,...fraudulently manufactured a conviction for Explosive Property Destruction in [1987] and a sentence of 42 years occurring in Memphis, TN (See EXHIBIT A, page 13, item 10 of MOTION TO EXPEDITE AND AMEND WRIT OF HABEAS CORPUS);
10) Both of these trials were held in absentia and while Appellant was incarcerated since 1982.
11) District Judge James C. Mahan and United States Attorney Gregory A. Brower acted in conspiracy by transferring the case at bar to Tennessee while Pendency of Motion was in effect.

Here follows a list of claims (assertions) raised at the district court. Issues (point(s) or matter(s) of discussion, debate, or dispute) raised on appeal arise from claims raised in district court, so are the same.

These claims and issues were raised in the original WRIT OF HABEAS CORPUS.

1) Illegal restraint of Anderson's liberties;

2) abuse of power;
3) Don Benny Anderson is factually and actually innocent of all federal and state crimes alleged in charging instruments;
4) All court tape recordings and transcripts are void of any evidence showing that Don Benny Anderson is guilty of charged crimes beyond a reasonable doubt standard;

5) this court has jurisdiction;
6) petitioner wants to stay in Nevada and open a business immediately; and
7) did not want to be forced to return to Illinois;
8) petitioner received no trial by jury in any federal or state jurisdiction where a crime was committed;
9) all federal and state courts lacked proper Article III authority to impose sentence or create a lawful judgment;
10) collateral review of final judgments of both federal and state judgments are necessary because petitioner has made a showing he has suffered actual harm from them;
11) petitioner is on parole because the court has not yet ruled on Case 2:08-cv-01239-RCJ-LRL.

MINUTE ORDER IN CHAMBERS RE: THE REQUIREMENTS OF Klingele v. Eikenberry and Rand v. Rowland, dated November 14, 2008, instructed Appellant

how to file reply. "Rule 56 effectuates the purpose of the federal Rules to eliminate Procedural booby traps that could prevent unsophisticated litigants from having their day in court." *Rand v. Rowland (9th Cir. 1998).*

These claims and issues were raised in ORIGINAL MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS TO DISMISS GOVERNMENT'S MOTION. TITLE 18 SECTION 1621 UNSWORN DECLARATIONS OF EVIDENCE UNSWORN AFFIDAVIT/ DECLARATIONS OF DON BENNY ANDERSON UNDER THE PENALTY OF PERJURY PURSUANT TO TITLE 28 U.S.C. SECTION 1746 PRESENTS THE FOLLOWING CONCISE STATEMENT SETTING FORTH EACH FACT MATERIAL TO THE DISPOSITION OF THIS MOTION

1) My name is DON BENNY ANDERSON. I am sixty-eight (68) years of age, having been born on December 19, 1940; in Springfield, Illinois;
2) I am of sound mind and fully competent to make this Affidavit/ Declarations under the penalty of perjury;
3) This Affidavit/Declarations must stand for Truth and Fact, unless challenged point-for-point by an opposing Affidavit/Declarations drawn under the same terms and conditions as this instrument;

4) This Affidavit/Declarations will stand for Truth and Fact before United States District Court, District of Nevada, in this Writ of Habeas Corpus;

5) This Affidavit/Declarations is made on personal knowledge and set forth facts that are admissible evidence;

6) Affiant/Plaintiff is serving a United States Parole Commission sentence;

7) Therefore, Respondent is the United States Parole Commission;

8) Writ of habeas corpus may be granted where Affiant is in custody in violation of the Constitution or laws or treaties of the United States. Title 28 U.S.C. Section 2241(c)(3);

9) Affiant's petition seeking habeas corpus relief is appropriate under 28 U.S.C. Section 2241 because he is challenging the fact or duration of his confinement/custody or restraint;

10) Pursuant to Title 28 U.S.C. Section 2241 is appropriate being used to challenge circumstance of confinement/ custody or restriction to one area and restrain of liberty;

11) Respondent has failed to file an appropriate answer or motion together with transcripts of all federal and state court proceedings, including federal and state prosecutors records and prosecutors notes, grand jury transcripts, appeal records and transcripts and totality of Case. federal and state court records and agents notes and agencies records and investigative reports;

12) Respondent has failed to make a return certifying the true cause of detention as mandated by Title 28 Section 2243;

13) Because Affiant, who is currently serving a sentence that was enhanced on the basis of a prior conviction is still in custody, he may challenge the enhancing conviction as constitutionally invalid even though the prior conviction's original custodial term has expired;

14) Affiant can collaterally attack the validity of a previous conviction used to enhance United States Parole Commission sentence obtained in violation of right to self-representation or right to counsel;

15) Habeas corpus via 2241 is appropriate where United States Parole Commission knowingly and willingly covered up organized government crime and illegally and unconstitutionally imposed sentence;

16) Affiant attacks the execution of sentence by United States Parole Commission and only cognizable under 28 U.S.C. Section 2241;

17) Affiant is entitled to federal habeas relief via 2241 if it is found that no rational trier of fact could have found proof of guilt beyond a reasonable doubt to the element of the offense as defined by federal or state law;

18) Affiant had an absolute right to be represented by counsel in all federal and state cases from conviction on appeal;

19) The Sixth Amendment right to the effective assistance of trial counsel has been extended to guarantee the effective assistance of counsel on the appeal by right;

20) Affiant was denied effective assistance of counsel in all federal and state cases and including appeal;

21) Affiant was in WANT OF EFFECTIVE ASSISTANCE OF COUNSEL AT ALL TRIALS AND ON APPEAL, in violation of his Sixth Amendment right and Fourteenth Amendment right;

22) Affiant's convictions, sentences and custody are in violation of ARTICLE III, Sec. 2, Cl.3 and Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution;

23) Affiant never knowingly, willingly and intelligently waived his constitutional rights;

24) Affiant/Petitioner/Plaintiff is entitled to summary judgment where the documentary evidence produced by the parties permits only one conclusion. Anderson v. Liberty Lobby, Inc., ,251-52(1986);

25) Affiant seeking summary judgment bears the initial responsibility of informing the Court of the basis of his motion, and identifying those portions of pleadings on file, together with the affidavits, which Plaintiff has done herein within Affidavit

that he believes demonstrates the "absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 325 (1986) (quoting Fed. R. Civ. P. 56 (c));

26) Respondent is being informed of its right to file counter-affidavits or other responsive evidentiary materials and failure to do so might result in summary judgment against respondent;

27) If the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.';

28) A party opposing a motion for summary judgment shall file a concise statement, and the source thereof in the record, of all material facts as to which there is a genuine issue precluding summary judgment;

29) Court cannot grant summary judgment for Government's motions because summary judgment is improper where the slightest doubt remains about the facts. See Rand v.Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998;

30) Purpose of a motion for summary judgment is to head off a full-scale trial by conducting a trial in miniature, on affidavits, so that not submitting affidavits is the equivalent of not presenting any

evidence at trial. See Rand v Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998;

31) Government never submitted any affidavits with its motions; therefore, never presented any evidence at trial;

32) Pro se litigants have a statutory right to self-representation in civil matters and must be ensured of meaningful access to the courts;

33) Consequently, we tolerate informalities from civil pro se litigants. See Haines v. Kerner, , 520-21(1972) (Pro se pleadings are held to less stringent standards than those prepared by attorneys.) See Rand v Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998;

34) Courts have a general duty "to ensure that pro se litigants do not lose their right to a hearing on the merits of their claim due to ignorance of technical procedural requirements" and "develop other procedural protections for pro se litigants" See Rand v Rowland, U.S. Court of Appeals for the 9th Cir., August 27, 1998;

35) With criminal intent Court and United States Attorney conspirators have designed ways for this pro se litigant and others to lose meritorious cases at every stage of Court's proceedings including requiring special paperwork, "procedural booby traps," with requirements in this case not imposed on lawyers;

36) Court judges and Government have demonstrated their contempt for the United States Supreme Court and U.S. Court of Appeals for the 9 Cir.

decisions and their criminal intent to overthrow them to cover up organized crime: "Consequently, we tolerate informalities from civil pro se litigants. See Haines v. Kerner, , 520-21(1972) (pro se pleadings are held to less stringent standards than those prepared by attorneys). See Rand v Rowland, U.S. Court of Appeals for the 9th Cir., August 27, 1998.";

37) Court used boilerplated Orders claiming lack of jurisdiction;

38) Due to Court coerced paper work that Affiant/Petitioner/Plaintiff was forced to use Government was able to use boilerplated motions with irrelevant and misleading claims like the following: "Respondent cannot make any representations concerning the factual background of Petitioner's case because Petitioner has not alleged that he has been convicted in a federal crime in the District of Nevada.";

39) PLAINTIFF'S REBUTTAL TO "GOVERNMENT'S MOTION TO DISMISS PETITIONS FOR WRIT OF HABEAS CORPUS, AND TO PROHIBIT PETITIONER FROM FILING ANY FURTHER PETITIONS FOR HABEAS CORPUS IN THE DISTRICT OF NEVADA"

Rebuttal:

a) Affiant/Petitioner/Plaintiff response is that Gregory A. Brower, United States Attorney and Robert L Ellman, Appellate Chief and Assistant

U.S. Attorney are criminals acting under the color of law to cover up organized crime.

b) Moving this Court to issue an Order directing the Clerk of this Court to strike any further petitions or pleadings (1) filed by Petitioner and (2) which appear to arise out of conviction(s) and/or sentences(s) imposed in other jurisdictions, or claims arising in other jurisdictions.

c) Following are some of the crimes that they are aware of, covering up, joined or are aiding and abetting: U.S. Attorney is attempting to block the following claims from being considered by Court via Government's motion:

Case 1) 2:08-cv-01256-JCM-LRL, U.S. District Court, Memphis, TN;

Case 2) 2:08-cv-01486-RCJ-PAL, U.S. District Court for the Southern District of Illinois, Alton IL;

Case 3) 2:08-cv-01501-KJD-GWF, Circuit Court – Pinellas County, Clearwater, FL;

Case 4) 2:08-cv-01514-JCM-GWF, 284th Judicial District Court of Harris County, Houston, TX;

Case 5) 2:08-cv-01566-RCJ-GWF, U.S. District Court, Alexandria, VA;

Case 6) 2:08-cv-01578-KJD-DWF, U.S. District Court for the Southern District of Illinois, Alton, IL;
Case 7) 2:08-cv-01579-KJD-GWS, Judicial District Court of Dallas County, Dallas, TX;
Case 8) 2:08-cv-01239-RCJ-LRL, U. S. District Court District of Nevada, Las Vegas, NV.

These claims and issues were also raised in ORIGINAL MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS TO DISMISS GOVERNMENT'S MOTION (See Exhibit C):

TITLE 18 SECTION 1621 UNSWORN DECLARATIONS OF EVIDENCE UNSWORN AFFIDAVIT/ DECLARATIONS UNDER THE PENALTY OF PERJURY PURSUANT TO TITLE 28 U.S.C. SECTION 1746 COVERING OTHER CRIMES NOT MENTIONED IN CONVICTED PERSONS QUESTIONAIRE.

1. My name is DON BENNY ANDERSON. I am sixty-seven (67) years of age, having been born on December 19, 1940; in Springfield, Illinois;
2. I am of sound mind and fully competent to make this Affidavit/Declarations under the penalty of perjury;
3. This Affidavit/Declarations must stand for Truth and Fact, unless challenged point-for-point by an opposing Affidavit/Declarations drawn under the same terms and conditions as this instrument;
4. This Affidavit/Declarations will stand for Truth and Fact before United States District Court, District of Nevada, in this Writ of Habeas Corpus;

5. This Affidavit/Declarations is made on personal knowledge and set forth facts that are admissible evidence;

6. Anderson declares the source of information relied on is unaltered court tape recordings and perfect transcripts made from them, without omissions or inaudible portions from the
7. following court cases to reveal that he is a victim of political kidnapping and was kidnapped in violation of Title 18 Section 1201; a victim of domestic terrorism in violation of Title 18 Section 2331; in forced labor in violation of Title 18 Section 1589, in involuntary servitude in violation of Title 18 Section 1584; and victim in respect of peonage, slavery involuntary servitude, or forced labor in violation of Title 18 Section 1590; victim of a conspiracy against rights in violation of Title 18 Section 141; and a victim of deprivation of rights under color of law in violation of Title 18 Section 242, and totality of all federal and state court and federal state agencies and agents records and agents information concerning the following cases:

A) 194th Judicial District Court of Dallas County, Dallas, Texas, Cause No.F78-483NM;

B) 284th Judicial District Court of Harris County, Houston, Texas, Cause No. 315053;

C) United States District Court for the Southern District of Illinois, Cause No. 2-CR-50031;

D) Circuit Court – Pinellas County, Clearwater, Florida, Cause No. CRC 83- 02708CFANO;

E) United States District Court for the Eastern District of Virginia, Cause No. 83-00159-A;

8. Anderson never heard or saw nor has knowledge of any evidence presented in any court by any prosecutor proving he committed fabricated charges as alleged in the charging instruments and knows that none ever existed and cannot be produced;
9. Anderson was constructively without counsel at trial and on appeal;
10. All counsels rendered Ineffective Assistance of Counsel and were incompetent;
11. Counsels were ineffective and incompetent not receiving total discovery for themselves and providing same information to Anderson;
12. Counsels were ineffective and incompetent for not exposing lack of probable cause

to believe Anderson committed crimes as alleged;

13. Counsels were ineffective and incompetent for not exposing that prosecution had kidnapped Anderson without proof of guilt or meeting the Supreme Court standard of proof beyond a reasonable doubt requirement.
14. Counsels were ineffective and incompetent by not ensuring Anderson enjoyed the right to a speedy and public trial by impartial jury, as mandated by the

Sixth Amendment to the Constitution for the United States of America;

15. Counsels were ineffective and incompetent by not ensuring Anderson had a trial by jury in a state where a crime was committed, so the court could have lawful jurisdiction and fair trial held, as mandated, by the United States Constitution for America, Article III, Section 2, Clause 3;
16. Counsels rendered ineffective assistance of counsel and were incompetent by not telling judge he was not being impartial, in open court, on the record;
17. Counsels rendered ineffective assistance of counsel and were incompetent by not telling judge in open court, on the record, that the judge knowingly and willingly sentenced Don Benny Anderson without prosecution ever proving alleged case nor meeting the reasonable doubt standard mandated by the Supreme Court, In re Winship;
18. Counsels rendered ineffective assistance of counsel and were incompetent for not preserving transcripts and court tape recordings so they could never be destroyed;
19. Counsels rendered ineffective assistance of counsel and were incompetent for not appealing the above issues;
20. Writ of habeas corpus should be issued on basis of any one of the declarations mentioned in this affidavit as well as prosecutor's comments during grand jury, hearings, court meetings, trial, closing, and sentencing that so infected trial with unfairness as to make

manufactured fictional conviction(s), a denial of due process.

21. All court proceedings were fundamentally unfair;
22. All courts listed in declaration 6 acted in the complete absence of all jurisdiction in sentencing Anderson;
23. The judgments of the above listed courts are legally and constitutionally null and void for Want of Jurisdiction;
24. Anderson is factually and actually innocent of all crimes charged in federal and state charging instruments;
25. The Supreme Court has decreed that the Due Process Clause requires the prosecution prove beyond a reasonable doubt every fact that constitutes the offense charged;
26. Federal and state prosecutors prosecuted Anderson knowing that they could not prove beyond a reasonable doubt every fact that constitutes the fictional offenses charged;
27. Anderson was brought up on bogus charges before controlled grand juries, which were dupes and rubber stamps for lying prosecutors;
28. Anderson was coerced into having incompetent counsel represent him in lawless federal and state courts;
29. Anderson gave notice to all federal and state courts that he was going to represent himself; yet actions of prosecutor, judge, and counsel made that impossible;
30. No federal or state prosecutor can give Anderson full discovery of all federal and state records because

nationwide conspirators will not expose a national conspiracy to frame him on bogus offenses;

31. No evidentiary hearing can be held with any prosecutor presenting proof beyond a reasonable doubt

every fact that constitutes the offense charged;

31. Anderson was convicted for non-offenses and illegally sentenced and imprisoned;
32. Anderson was denied Due Process because the FBI will fail to prove that a lawfully impaneled Grand Jury with 12 legally qualified jurors concurred to the fictional indictments, either federal or state. No foreperson or deputy ever recorded the number of jurors concurring or filed with the clerk. All judges refused to provide this document;
33. "No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury;
34. FBI will fail to provide unaltered court tape recordings and perfect transcripts made from them from any court proving Anderson committed the crimes as charged meeting the reasonable doubt standard;
35. Respondents will fail to provide totality of transcripts and tape recorded records.
"No person...shall be compelled in any criminal case to be a witness against himself."
36. The FBI will fail to prove Beyond a Reasonable Doubt from the totality of all state and federal records that

All court sentences, both state and federal, are valid; they were rendered without jurisdiction;

37. Don Benny Anderson is constitutionally, statutorily, legally, factually and actually innocent of all federal and state charges as alleged in the charging instruments;
38. Exhibit A claims that Anderson was convicted of Extortion and Conspiracy to Extort, and received a sentence of 24 years total in Alton, Illinois. Anderson is declaring, under penalty of perjury, that he was never convicted of Extortion and he never received a total of 24 years from the court in Alton;
39. Exhibit A shows that Anderson received for Explosive Property Destruction, 42 years in Memphis, Tennessee;

40. Exhibit A claims that Anderson was convicted of 2 counts of Arson in Clearwater, Florida, and received a 30 yr. sentence. Anderson was never lawfully convicted in Florida in an Article III trial. Anderson was never put on trial under oath; evidence was never presented.
41. In the matter of the United States District Court for the Eastern District of Virginia, Cause No. 83-00159-A, it charged that Anderson was unlawfully and knowingly involved, with co-conspirators, in the making of firearms, including explosive bombs, that were used to destroy buildings and personal property used in performing abortions and to otherwise

interfere with the performance of abortions. The Judge hearing this case refused to accept a plea, with Anderson claiming he did not commit any of the acts or crimes mentioned in the indictment.

42. Anderson also relies on, In re Winship, 397 U.S. 358 (1970), "We explicitly hold that the Due Process Clause protects the accused conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged";
43. Anderson gave notice to all courts that he was going to appeal, himself, but courts denied him this right and never provided transcripts.
44. The court is justified on issuance of a writ of habeas corpus. Anderson has demonstrated that claims could not have been raised on direct appeal, that convictions produce lingering civil disabilities and the errors complained of herein are the type of defect that would justify habeas corpus relief;
45. Don Benny Anderson relies on our nation's inspired Trump Card; **WE THE PEOPLE** of the United States . . . Constitution for the United States of America [Preamble].

46. Pursuant to 28 U.S.C. Section [2243], this court is to take allegations as true except to the extent that judge finds from the evidence that they are not true;
47. The penalty for perjury is five (5) years;
48. In America, the law is King. – Thomas Paine

49. Truth is Sovereign in Law
FURTHER DON BENNY ANDERSON SAYETH NAUGHT.

Signed under Title 28 U.S.C. Section 1746 on this 6th day of October 2008.

s/ Don B. Anderson
Don Benny Anderson

These claims and issues were also raised in ORIGINAL MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS TO DISMISS GOVERNMENT'S MOTION

GOVERNMENT CLAIMS THE FOLLOWING:

A. Factual and Procedural Background

1. **"Respondent cannot make any representations concerning the factual background of Petitioner's case because Petitioner has not alleged that he has been convicted in a federal crime in the District of Nevada."**

Rebuttal:

a) Affiant/Plaintiff's response is that the United States Parole Commission is the Respondent;
b) Government is counsel for USPC;
c) Government with criminal intent falsified the caption on its motion;
d) Affiant was prejudiced by Judge James C. Mahan language and Order calculated to booby trap Plaintiff, dated October 8, 2008;
e) Judge Mahan booby trapped Affiant into using court' approved forms and language in

caption on his writs stating the following: Don Benny Anderson vs. Federal Bureau of Investigation, et. al.;

f) Judge James C. Mahan wanted the caption to read as follows based on his ORDER, case number 2:08-cv-1256-JCM-LRL, dated the 8th day of October, 2008:

g) DON BENNY ANDERSON, Plaintiff, vs. FEDERAL BUREAU OF INVESTIGATION, et al., Defendants.

h) The Federal Bureau of Investigation was not designated as respondent by Anderson.

i) Actual respondent is the United States Parole Commission, based on UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, CA9 Docket No.: 08-17603; Agency Number No: 2:08-cv-01239-RCJ-LRL; Short Title: Don Anderson v. USPC; D.C. No. 2:08-cv-01239-RCJ-LRL indicated on United States Court of Appeals for the Ninth Circuit Time Schedule Order. Filed Dec. 01, 2008;

j) There is a genuine issue necessary to be litigated. Government claimed the following :

2. "Moreover, Respondent cannot find any record of a federal prosecution in this District naming Petitioner as a defendant." Rebuttal: a)Affiant agrees with this statement;

b) However, it is irrelevant to this matter and exists as a genuine issue necessary to be litigated.

3. "PACER lists five separate cases that Petitioner has initiated in this district in 2008." Rebuttal: a)Affiant questions this statement; b)There exists as a genuine issue necessary to be litigated.
4. On September 19, 2008, Petitioner filed a self-styled "Writ of Habeas Corpus" in Case No. 2:08-cv-01256-JCM-LRL, naming the Federal Bureau of Investigation ("FBI") as the respondent. Rebuttal: a) Affiant agrees; b) Clerk or Judge should have ordered the writ captioned correctly just as UNITED STATES

COURT OF APPEALS FOR THE NINTH CIRCUIT has done; c) Petitioner was prejudiced; d) There is a genuine issue necessary to be litigated.

5. On October 28, 2008, Petitioner filed an amended form petition for habeas corpus in Case No. 2:08-v-01486-RCJ-PAL, naming the FBI and unspecified others as respondent(s).

   Rebuttal: a)Affiant agrees; b)Judge ordered Affiant to use a court booby trapped form and captioning by Judge was deliberately booby trapped so corrupt judicial officials and government could use it in their favor; c)Clerk or Judge should have ordered the writ captioned correctly just as UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT has done; d) Petitioner was prejudiced; e)There is a genuine issue necessary to be litigated

6. "On October 31, 2008, Petitioner filed an amended form petition for habeas corpus in Case No. 2:08-cv-

01501-KJD-GWF, naming the FBI and unspecified others as respondent(s)." (See page 2 of Government's motion). Rebuttal: Plaintiff was required to use form provided. The form has printed on it Respondent. Judge James C. Mahan wants the caption to read as follows based on his ORDER, case number 2:08-cv-1501-KJD-GWF, dated the 8th day of October, 2008. DON BENNY ANDERSON, Plaintiff, vs. FEDERAL BUREAU OF INVESTIGATION, et al., Defendants. Apparently Judge Mahan does feel a respondent needs to be designated. There is a genuine issue necessary to be litigated.

7. "On November 4, 2008, Plaintiff filed another form petition for habeas corpus in Case No. 2:08-cv-01514-JCM-GWF, again naming the FBI and unspecified others as respondent(s)." (See page 2 of Government's motion). Rebuttal: Plaintiff was required to use form provided. The form has printed on it Respondent. Judge James C. Mahan wants the caption to read as follows based on his ORDER, case number 2:08-cv-1514-JCM-GWF, dated the 8th day of October, 2008. DON BENNY ANDERSON, Plaintiff, vs. FEDERAL BUREAU OF

INVESTIGATION, et al., Defendants. Apparently Judge Mahan does feel a respondent needs to be designated. There is a genuine issue necessary to be litigated

8. "Yet another petition for writ of habeas corpus, which Plaintiff filed on September 17, 2008 in Case No. 2:08-cv-01239-RCJ-LRL, named he United States Parole Commission as the respondent. The petition in that case was dismissed summarily by a Clerk's Judgment dated and filed October 24, 2008." (See page 2 of Government's motion). Rebuttal: Plaintiff disagrees with this issue. Petition for writ of habeas corpus, Case No. 2:08-cv-01239-RCJ-LRL, was ordered DENIED by Judge Robert C. Jones on October 24, 2008 and decision was recorded by Lance S. Wilson, Clerk on the same date. By their actions, plaintiff was denied the 10-day period for appeal as provided for in Rule 59E, "A motion to alter or amend a judgment must be filed no later than 10 days after the entry of the judgment."
9. "The United States Attorney has received two additional, yet-undocked petitions naming "Federal Bureau of Investigation et al. as respondents." (See page 2 of Government's motion). Rebuttal: Plaintiff was required to use form provided. The form has printed on it Respondent. Judge James C. Mahan wants the caption to read as follows based on his ORDER. DON BENNY ANDERSON, Plaintiff, vs. FEDERAL BUREAU OF INVESTIGATION, et al., Defendants. Apparently Judge Mahan does feel a respondent needs to be designated.
   There is a genuine issue necessary to be litigated
10. "The petitions in all of the above-referenced cases purport to be brought under 18 U.S.C. [Section] 2241." (See page 2 of Government's motion). Plaintiff agrees

with this statement. This issue does not require litigation.

Analysis (See page 2 of Government's motion).

A.. "The above-captioned cases should be dismissed for lack of jurisdiction and/or improper venue." (See page 2 of Government's motion). Plaintiff disagrees with this statement. There are many issues necessary to be litigated, as mentioned above.

B. "Petitioner does not allege to have been, nor does he appear to have been, convicted of a federal crime in the District of Nevada." (See page 2 of Government's motion). Rebuttal: Anderson agrees with this statement. However, it is irrelevant to this matter and exists as a genuine issue necessary to be litigated. See IDEMA v. RICE, 478 F.Supp.2d 47 (D.D.C.2007).

C.. "Consequently, to the extent Petitioner appears to be seeking relief under 28 U.S.C. [Section] 2255, this Court lacks jurisdiction to review the petition or grant relief. Plaintiff disagrees with this statement. As the Gregory A. Brower, U.S. Attorney, so eloquently stated above in Factual and Procedural Background, of Government's Motion, the petitions in all of the above-referenced cases purport to be brought under 18 U.S.C. [Section] 2241."
(See 28 U.S.C. [Section] 2255 (a prisoner can bring a motion under Section 2255 by "mov[ing] *the court ...*" to vacate, set aside, or correct it) (emphasis added);

Hernandez v, Campbell, 204 F.3d 861, 866 (9th Cir. 2000); *Short v. United States,* 504 F.2d 63, 65, (6th Cir. 1974). (See pages 2 and 3 of Government's motion). This statement is irrelevant. This a Section 2241 issue and exists as a genuine issue necessary to be litigated.

D. "Petitioner does not allege to be, nor does he appear to be, in custody in the District of Nevada. Anderson agrees that he was not in the custody of the District of Nevada, but was under the control of the U. S. Parole Commission while in Nevada and filed a PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2241 by a person in custody. This statement is irrelevant. This a Section 2241 issue and exists as a genuine issue necessary to be litigated.

E. Consequently, venue is improper for a claim under Section 2241. *United States v. Hayman, 342 U.S. 205, 213 (1952).* (See page 3 of Government's motion). At the time original writ of habeas corpus was filed in this court, Don Benny Anderson was residing ... [in] Las Vegas, NV 89134, with intentions of establishing a permanent residence there and opening a business. This court had jurisdiction because the Convicted Persons Questionnaire was presented for signature when registering with Las Vegas Metropolitan Police, since he was on parole, and because the court had not yet ruled on Case 2:08-cv-01239-RCL-LRL. Petitioner would still be residing in Las Vegas if he had not been forced to return to Illinois, and plans to live in Nevada

... and establish a gun sales business, as plainly stated in all petitions. Anderson requested an immediately decision in order to remain in Nevada so that he would not be compelled to return to Illinois. This statement is irrelevant. The above cited case is irrelevant and not on point. Anderson relies on *Idema v. Rice.* This is a Section 2241 issue and exists as a genuine issue necessary to be litigated.

F. "Finally, Petitioner does not allege to be, nor does he appear to be, in the custody of the FBI." (See page 3 of Government's motion). Anderson never claimed to be in the custody of the FBI. Since Anderson claimed that he was in custody and filed a PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2241 by a person in custody, Government should have looked to the facts of the case to determine who the Respondent would truly be. Ground 1 in Petitioner's PETITION FOR A WRIT OF HABEAS CORPUS clearly reveals that U.S. Parole Commission would be the Respondent because they claim they have jurisdiction over Anderson and as result he had to report to Las Vegas Metropolitan Police and make reports to Parole Officer. . . There exists a genuine issue necessary to be litigated because of the fraudulent claim above.

G. "Consequently, there is no cognizable claim for relief against the named defendant under Section 2241 or 2255. (See page 3 of Government's motion). Defendant(s) were not specified in this motion. The

Judge, by his order, named defendant as FEDERAL BUREAU OF INVESTIGATION, et. al. This exists as a genuine issue necessary to be litigated.

H. "***Runsield v. Padilla***, 426, 447 (2006) ("Whenever a [Section] 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement.". (See page 3 of Government's motion). Anderson does not claim to be confined with a warden. Anderson relies on *Idema v. Rice*. This Court has venue to hear this Writ. This issue is relevant and there exists a genuine issue necessary to be litigated.

I. "Petitioner's decision to treat the FBI as his "warden" by naming the FBI as respondent is also fatal to jurisdiction." (See page 3 of Government's motion). Response same as F.
There exists a genuine issue necessary to be litigated because of the fraudulent claim above.

J. "Because the petitioner in Padilla filed his petition in a different district that that of his actual "warden," the Court held that the district court lacked jurisdiction to hear it. *Id.*" (See page 3 of Government's motion). Anderson does not claim to be confined with a warden. Anderson relies on *Idema v. Rice, 478 f.Supp.2d 47 (D.D.C 2007)* This Court has jurisdiction to hear this Writ. The issue is relevant and there exists a genuine issue necessary to be litigated.

K. <u>Further, Similarly Frivolous Petitions Should Be Prohibited</u> (See page 3 of Government's motion). "As demonstrated above, plain defects in jurisdiction

and venue make clear that no post-conviction relief petition filed by Petitioner in this district can ever progress to an adjudication on the merits." (See page 3 of Government's motion).

At the time original writ of habeas corpus was filed in this court, Don Benny Anderson was residing with Kay Dahlgren at 8724 Litchfield Ave., Las Vegas, NV 89134, with intentions of establishing a permanent residence there and opening a business.

This court had jurisdiction because the Convicted Persons Questionnaire was presented for signature when registering with Las Vegas Metropolitan Police, since he was on parole, and because the court had not yet ruled on Case 2:08-cv-01239-RCL-LRL.

Petitioner would still be residing in Las Vegas if he had not been forced to return to Illinois, and plans to live in Nevada and establish a gun sales business, as plainly stated in all petitions. Anderson requested an immediately decision in order to remain in Nevada so that he would not be compelled to return to Illinois.

Because Affiant, who is currently serving a sentence that was enhanced on the basis of a prior conviction is still in custody, he may challenge the enhancing conviction as consti- tutionally invalid even though the prior conviction's original custodial term has expired;

Affiant can collaterally attack the validity of a previous conviction used to enhance

United States Parole Commission sentence obtained in violation of right to self-representation or right to counsel;

Court cannot grant summary judgment for Government's motions because summary judgment is improper where the slightest doubt remains about the facts. See Rand v Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998; purpose of a motion for summary judgment is to head off a full-scale trial by conducting a trial in miniature, on affidavits, so that not submitting affidavits is the equivalent of not presenting any evidence at trial. See Rand v Rowland, U.S.Court of Appeals for the 9th Cir. – August 27, 1998;

Government never submitted any affidavits with its motions; therefore, never presented any evidence at trial; Plaintiff disagrees with this statement. There exists a genuine issue necessary to be litigated.

L. "Consequently, the petitions are frivolous. Therefore, in order to preserve judicial and executive branch resources, and to prevent further abuse of judicial process, Respondent moves this Court to issue an Order directing the Clerk of this Court to strike any further petitions or pleadings (1) filed by Petitioner and (2) which appear to arise out of conviction(s) and/or sentence(s) imposed in other jurisdictions, or claims arising in other jurisdictions." (See page 3 of Government's motions). It is apparent that the

originally submitted motion presented by government defendants failed to comply with the requirements of Local Rule 56.1, and accordingly the motion was improperly filed and should be dismissed. Local Rule 56.1 requires a Concise Statement setting forth each fact material to the disposition of the motion which the party claims is or is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, or other evidence upon which the party relies. Plaintiff found no Concise Statement to which to present a rebuttal of fact, but attempted to respond to the vagaries of the government's motion. Local Rule 56.1 does anticipate an ability for a moving party to have the facts concisely summarized so that the responding party may have an opportunity to concisely rebut same. Failure to do so prejudices not only the responding party, but this honorable Court as well. It is therefore requested that the GOVERNMENT'S MOTION TO DISMISS PETITIONS FOR WRIT OF HABEAS CORPUS, AND TO PROHIBIT PETITIONER FROM FILING ANY FURTHER PETITIONS FOR HABEAS CORPUS IN THE DISTRICT OF NEVADA be stricken for failing to comply with Local Rule 56.1.

a) Conclusion (See page 4 of Government's motions).

M. "The petitions filed in the above-captioned cases should be dismissed for lack of juris- diction and improper venue." (See page 4 of Government's

motion.) This petition should not be dismissed as there exists a genuine issue necessary to be litigated. This Court does have jurisdiction and venue. Anderson relies on *Idema v. Rice, 478 f.Supp.2d 47 (D.D.C 2007)*

N. "Further filings by Petitioner, based on his conviction(s) and/or sentence(s) imposed in other jurisdictions, should be stricken as frivolous." (See page 4 of Government's motion.)

Plaintiff's filings are not frivolous. It has been shown that this court has jurisdiction to require Government to respond to Plaintiff's motion. Equitable remedies that the court can provide in habeas cases include an order freeing a plaintiff from penalties resulting from conviction that persists beyond the end of detention.

This Court should be deeply troubled by the allegations raised in the habeas petition and various subsequent filings regarding the level of United States Parole Commission and Federal Bureau of Investigation's control over plaintiff's arrests, convictions, appeals, and confinement. These facts are alleged in a habeas petition and later statement of fact and affidavits that have all been verified as true and correct by petitioners under penalty of perjury.

This Court cannot simply ignore plaintiff's alleged facts and find that it lacks jurisdiction without any response to these troubling facts by defendants. In Idema v. Rice, respondents invited the Court to seek further information from defendants regarding the facts in the case. In this case, Government

(defendants) demanded that this matter be tried by motion.

And the Court, in concert with defendants, has compelled Anderson to answer Government's motion for summary judgment. Accordingly, the defendants shall respond to plaintiff's factual allegations and

show cause why this Court should not grant summary judgment in Anderson's favor and grant writ of habeas corpus to plaintiff.

"DATED this 13h day of November, 2008. Respectfully Submitted, GREGORY A. BROWER, United States Attorney /s/ Robert L. Ellman ROBERT L. ELLMAN Assistant U.S. Attorney District of Nevada". (See page 4 of Government's motion.)

FURTHER DON BENNY ANDERSON SAYETH NAUGHT.

Signed under Title 28 U.S.C. Section 1746 on this 19th Day of December, 2008.

s/ Don B. Anderson
Don Benny Anderson

These claims and issues were raised in the original PLAINTIFF'S OPPOSING POINTS AND AUTHORITIES IN REBUTTAL TO GOVERNMENT'S RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT and GOVERNMENT'S

FAILURE TO RESPOND TO MOTION TO DISMISS GOVERNMENT'S MOTION

A. *Timeliness Certification:* This PLAINTIFF'S OPPOSING POINTS AND AUTHORITIES IN REBUTTAL TO GOVERNMENT'S RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT and FAILURE TO RESPOND TO MOTION TO DISMISS GOVERNMENT'S MOTION is timely filed with eleven (11) days after Government received Court's minute order quoted immediately hereafter and ...sent its motion to Plaintiff on December 23, 2008:

Pursuant to "Motion for Summary Judgment-Fed. R. Civ.P.56 If the moving party has filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) or a motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) and attached admissible evidence to the motion, or if it has filed a motion for summary judgment under Fed. R. Civ. P.56, then the non-moving party must properly oppose the motion, by filing opposing and a statement of facts under Local Rule 56-1, with fifteen (15) days after service of the motion...The Ninth Circuit Court of

Appeals has directed that the following notice be given to you: A motion for summary judgment is a means through which the defendants seek to have your case dismissed. A motion for Summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Federal Rule of Civil Procedure 56 tells you what you must do in order to oppose a motion for summary judgment. . . If summary judgment is granted, your case will be dismissed and there will be no trial.

Rule 56-1 of the Local Rules for the United States District Court for the District of Nevada also requires, in addition, that you file with your opposition to a motion for summary judgment a statement of facts which you contend are or not genuinely in issue. In this summary judgment procedure. If you are opposing a summary judgment motion, you should review the opposing party's Local Rule 56-1 statement of facts not genuinely in issue, and you should set forth in writing those facts (supported by specific citation to evidence in the record which you have attached to your motion or statement) which contradict the claims of the opposing party. In other words, you must provide the court a statement of facts supported by attached admissible evidence that demonstrates that the opposing party is not entitled to judgment against you.

If the non-moving party fails to oppose the motion within fifteen (15) days, or if the non-moving party fails to submit evidence supporting its opposition, and if the motion for summary judgment has merit, that failure to file points and authorities in response to any motion shall consent to the granting of the motion. Local Rule 7-2(d)."

C. Since Government never properly opposed Plaintiff's motions by filing opposing points and authorities, admissible evidence, and a statement of facts under Local Rule 56-1, within fifteen (15) days after service

of the motion, there are no disputed issues of material fact concerning claims for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

D. For the reasons set forth above, below and found in Plaintiff's original motion, Plaintiff is entitled to relief. Therefore Court should summarily deny government's motions and/or dismiss the motions and grant summary judgment in Don Benny Anderson's favor.

E. Government claimed "Petitioner has filed at least eight (8) lawsuits in this district since September, 2008. Each of these suits appears to be frivolous, as Petitioner has no basis to invoke this Court's jurisdiction" and also fraudulent claimed Petitioner's 58-page motion for summary judgment should be summarily denied or dismissed as moot.

F. On page 61 of Petitioner-Plaintiff's Rebuttal To Government's Deliberately Combined Motion To Dismiss Nos. 2:08-cv-01256-JCM-LRL, 2:08-cv-01486-RCJ-PAL, 2:08-cv-01501-KJD-GWF, 2:08-cv-01514-JCM-GWF Petitions For Writ Of Habeas Corpus, And To Prohibit Petitioner From Filing Any Further Petitions For Habeas Corpus In The District Of Nevada And Plaintiff's Motion For Summary Judgment And Motion To Dismiss, Plaintiff's answered Government / Respondent's Statement: "Further, Similarly Frivolous Petitions Should be Prohibited. As demonstrated above, plain defects in jurisdiction and venue make clear that no post-

conviction relief petition filed by Petitioner in the district can ever progress to an adjudication on the merits." Plaintiff responded by affidavit that, at the time original writ of Habeas Corpus was filed in this Court, Don Benny Anderson was residing at 8724 Litchfield Ave., Las Vegas NV 89134, with intentions of establishing a permanent residence there and opening a business.

G. This court had jurisdiction because the Convicted Persons Questionnaire was presented for signature when registering with Las Vegas Metropolitan Police, since he was on parole, and the court had not yet ruled on Case 2:08-cv-01239-RCL-LRL.

H. Petitioner would still be residing in Las Vegas if he had not been forced to return to Illinois, and plans to live in Nevada and establish a gun sales business, as plainly stated in all petitions. Anderson requested an immediate decision in order to remain in Nevada so that would not be compelled to return to Illinois.

I. Because Affiant, who is currently serving a sentence that was enhanced on the basis of a prior conviction, is still in custody, he may challenge the enhancing conviction as consti-tutionally invalid even though the prior conviction's original custodial term has expired.

J. Affiant can collaterally attack the validity of a previous conviction used to enhance United State Parole Commission sentence obtained in violation of right to self-representation or right to counsel.

K. Court cannot grant summary judgment for Government's motions because summary judgment is improper where the slightest doubt remains about the facts. See Rand v. Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998; Purpose of a motion for summary judgment is to head off a full-scale trial by conducting a trial in miniature, on affidavits, so that not submitting affidavits is the equivalent of not presenting any evidence at trial. See Rand v. Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998;

L. Government never submitted any affidavits with its motion; therefore, never presented any evidence at trial.

M. Government/Respondent also stated: "Further filings by Petitioner, based on his conviction(s) and/or sentence(s) imposed in other jurisdictions, should be stricken as frivolous."

Again, Plaintiff responded by affidavit. Plaintiff's filings are not frivolous. It has been shown that this court has jurisdiction to require Government to respond to Plaintiff's motion. Equitable remedies that the Court can provide in habeas cases include an order freeing a plaintiff from penalties resulting from conviction that persists beyond the end of detention.

N. This Court should be deeply troubled by the allegations raised in the habeas petition and various subsequent filings regarding the level of United States

Parole Commission and Federal Bureau of Investigation's control over plaintiff's arrests, convictions, appeals, and confinement. These facts are alleged in a habeas petition and later statement of fact and affidavits that have all been verified as true and correct by petitioners under penalty of perjury.

O. This Court cannot simply ignore plaintiff's alleged facts and find that it lacks jurisdiction without any response to these troubling facts by defendants.

P. In Idema v. Rice [478 F.Supp.2d (D.D.C.2007)], respondents invited the Court to seek further information from defendants regarding the facts in the case.

Q. In this case, Government (defendants) demanded that this matter be tried by motion. And the Court, in concert with the defendants, has compelled Anderson to answer Government's motion for summary judgment. Accordingly, the defendants shall respond to Plaintiff's factual allegations and show cause why this Court should not grant summary judgment in Anderson's favor and grant writ of habeas corpus to plaintiff.

R. There is in reality no genuine issue of material fact··· that is, no real dispute about any fact that would affect the result of this case.

S. Government asked for summary judgment to end case, but failed to properly support it with declarations (or

other sworn testimony). Government's motion was not supported by Memorandum of Points and Authorities in Support of Government's Motion for Summary Judgment filed. Therefore, Government's motions are frivolous.

T. In order to preserve judicial and executive branch resources and to prevent further abuse of judicial process and abuse of power, criminal acts committed by corrupt federal and state agents, Government's motions should be dismissed with prejudice and order compensation or relief court would deem just and proper.

U. Government also stated "*See* Respondent's Motion to Dismiss, filed on 11/13/08, Docket Item No. 7. Given the lack of this Court's jurisdiction (because Petitioner was neither convicted nor imprisoned in the District of Nevada and has no apparent connection to this district for purposes of jurisdiction or venue), this Court issued an order on November 19, 2008, transferring this case on the Court's on motion to the United States District Court for the Western District of Tennessee. *See* Docket No. 9. Consequently, this case is closed and Petitioner's 58-page motion for summary judgment should be summarily denied or dismissed as moot."

V. Since the GOVERNMENT'S MOTION TO DISMISS PETITIONS FOR WRIT OF H ABEAS CORPUS, AND TO PROHIBIT PETITIONER FROM FILING ANY FURTHER PETITIONS FOR HABEAS CORPUS IN THE DISTRICT OF NEVADA was filed on 11/13/08,

and the Court had not yet ruled on that motion by 11/19/08, the Court could not legally transfer this case to another District prior to ruling.

W. The Government states that Court has issued an order transferring this case on the Court's on motion to the United States District Court for the Western District of Tennessee, on November 19, 2008. The Plaintiff had not been notified of this transfer. If this is true,

please provide the case number that has been assigned by the U.S. District Court in Tennessee, as well as a copy of the order and the acknowledgment of receipt of the order.

X. Previously, pursuant to Federal Rule of Civil Procedure 56, Plaintiff, Don Benny Anderson, respectfully moved the court to dismiss Government's motions and grant his motion for summary judgment in all of his cases mentioned herein in his favor.

Y. From TITLE 18 SECTION 1621 UNSWORN DECLARATIONS OF EVIDENCE UNSWORN AFFIDAVIT/DECLARATIONS UNDER THE PENALTY OF PERJURY PURSUANT TO TITLE 28 U.S.C. SECTION 1746 PRESENTS THE FOLLOWING CONCISE STATEMENT SETTING FORTH EACH FACT MATERIAL TO THE DISPOSITION OF THE MOTION of Plaintiff's original summary judgment motion, "STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSION OF LAW" presented in the following

cases within the above mentioned affidavit, beginning on page eight (8) for case nos.: 2:08-cv-01256-JCM-LRL; 2:08-cv-01486-RCJ-PAL; 2:08-cv-01501-KJD-GWF; 2:O8- 01514-JCM-GWF; 2:08-CV-01566-RCJ-GWF; 2:08-cv-01578-KJD-GWF; 2:08-CV-01579-KJD-GWF.

1. There are no disputed issues of material fact concerning the first (claim) GROUND 1 in all above listed cases, for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.
2. There are no disputed issues of material fact concerning the second (claim) GROUND 2 in all above listed cases, for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.
3. There are no disputed issues of material fact concerning the third (claim) GROUND 3 in all above listed cases, for relief and, as a matter of law, the legal issues must be decided in Don Benny Anderson's favor.

FURTHER SAYETH DON ANDERSON NAUGHT.
Signed on July 30, 2009 pursuant to Title 18 Section 1621 and Title 28 U.S.C. Section 1746.

Respectfully submitted,

s/ Don B. Anderson
Don Benny Anderson

ANDERSON'S LEGAL ARGUMENTS

In the ORDER, dated April 28, 2009, Court stated "Before the court is petitioner's motion for summary judgment (docket #12). This motion shall be denied as moot, as this court transferred the petition for writ of habeas corpus to the United States District Court for the Western District of Tennessee on November 19, 2008. IT IS THEREFORE ORDERED that the motion for summary judgment (docket #12) is DENIED as moot, as this matter has been transferred to the United States District Court for the Western District of Tennessee."

The FBI fraudulently manufactured a conviction in Memphis, TN for Explosive Property Destruction in 1987 with a sentence of 42 years while Appellant was incarcerated since 1982. There was no actual trial in absentia, but the conviction was a "paper creation" created by Federal Bureau of Investigation. U.S. District Judge, James C. Mahan, Appellate Chief and Assistant U.S. Attorney, Robert L. Ellman, and United States Attorney Gregory A. Brower, knowing that no true physical trial took place, has transferred this case to Tennessee.

Court transferred this petition to Tennessee during "pendency of motion", and failed to provide Appellant with copy of the order. Courts have no authority to "terminate"

appealable and make them un-appealable simply by refusing to adjudicate them and calling them "moot". "A party asserting that an issue is moot must demonstrate

that there is no reasonable motions expectation that the violation will recur". See *County of Los Angeles v. Davis, 440 U.S. 625, 630 (1979)*; accord in *re Campbell, 628 F. 2nd 1260, 1261 (9th Cir. 1980).*

Anderson's motions cannot be moot because the court had jurisdiction and could have provided a remedy. Court cannot grant summary judgment for Government's motions because summary judgment is improper where the slightest doubt remains about the fact. See *Rand v. Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998.*

To grant a motion for summary judgment, a court must determine that there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A genuine issue exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, (1986).* In considering a motion for summary judgment, the court is required to view the facts and draw reasonable inferences in a light most favorable to the nonmoving party. *Id.* at 255. At the summary judgment stage the Judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson,* supra at 249.

Plaintiff has shown that this court has venue and jurisdiction. Equitable remedies that the court can provide in habeas cases include an order freeing Plaintiff

from penalties resulting from conviction that persists beyond the end of detention, appropriate compensation, and expungement of all State and Federal records to be turned over to Plaintiff, least Don Benny Anderson, Plaintiff, suffer further irreparable injury.

Since all Courts have acted in complete absence of jurisdiction to create a lawful conviction of sentence, Anderson requests that this court, sua sponte, on its own motion and pursuant 2243 which confers on federal courts the discretion to dispose of habeas corpus matters and to tailor remedies "as law and justice require" order compensation or relief as this court would deem just and proper. See case of Ervin McGee, Jr. vs. City of Tulsa (2007) where $14.5 million awarded for wrongful conviction and imprisonment.

Collateral review of all federal and state judgments are necessary because Plaintiff has made a showing he has suffered from actual harm from them. Plaintiff has reasonable expectation that he will have to register again in Nevada until all cases are resolved, and fraudulently alleged crimes and/or fictionally created crimes removed from his rap sheet and all federal and state records, and he will have to register in Florida as well as in other states. Business, travel privileges and liberties are restricted.

In the Government's Response In Opposition To Motion For Summary Judgment, dated December 23, 2008, the Government makes mention of the Petitioner's 58-page motion for summary judgment. The Petitioner's

motion actually included 67 pages, By overlooking the final 9 pages of the motion, the Respondent disregarded the allegations contained therein.

The Government provided no affidavits and no authorities in its so-called Government's Response In opposition to Motion For Summary Judgment, as required of the non-moving party in opposition to that motion for summary judgment. Local Rule 7-2(b). Thus the court should grant Plaintiff's motion and dismiss the non-moving party's motion and claims.

What is relevant to this Informal Brief is the fact that the record of this case contains not one affidavit by government or a piece of paper from appellees that would qualify as evidence under the Rules of Civil Procedure. Although the record includes numerous fraudulent governmental statements, there is nothing, beyond the conspiracy of the U.S. Attorney Gregory A. Brower, Chief Appellate and Assistant U.S. Attorney, Robert L. Ellman and the corruption of the "fact-finder" U.S. District Judge, James C. Mahan, in denying Appellant's motion as "moot" and transferring the petition for writ of habeas corpus to Tennessee.

The inability of a federal court to "review moot cases derives from the requirement of Article III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy." Liner v. Jafco, Inc., 375 U.S.301, 306 n.3 (1964). "Federal courts are without power to decide questions that cannot

effect the rights of litigants in the case before them." North Carolina v. Rice, 404 U.S. 244, 246 (1971) (per curiam).

In Lane v. Williams, 455 U.S. 624 (1982), the court observed: " Collateral review of final judgment... is not warranted absent a showing that the complainant suffers actual harm from the judgment that he seeks to avoid." In this case, Anderson has demonstrated collateral consequences, which are made manifest by the court's Order, and are likely to recur.

It is evident that this court must use its supervisory powers. The Supreme Court has recognized three bases for the exercise of a court's supervisory power: (1) to implement a remedy for violation of recognized rights, (2) to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a jury, and (3) to deter future illegal conduct. *United States v. Hasting, 461 U.S. 499, 505 (1983); United States v. Simpson, 927 F.2d 1088,1090 (9th Cir. 1991.* All three of these bases apply to Anderson's case.

"A court must not allow itself to be made an accomplice [ ] in willful disobedience of law." *McNabb v. U.S., 318 U.S. 322, 345, 63 S. Ct. 608, 615, 87 L. Ed. 819, (1943).* "Guided by considerations of justice, a court may exercise its supervisory power as necessary to preserve judicial integrity and deter illegal conduct." *United States v. Hastings, 461 U.S. 499, 505, 103 S. Ct., 1974, 1978, L.Ed. 96 (1983).*

Respectfully Submitted,

s/ Don B. Anderson
Don Benny Anderson

CERTIFICATE OF SERVICE

I, Don Benny Anderson, do swear or declare that on this 30th day of July 2009008, I have served this **APPELLANT'S INFORMAL BRIEF** on the following parties to this proceeding, by depositing it in an envelope containing the above document in the United States mail properly addressed and with first-class postage prepaid.

The name and address of parties served is a follows:

Clerk, U.S. Court of Appeals for the Ninth Circuit
P. O. Box 193939
San Francisco, California 94119-3939

United States Attorney
333 Las Vegas Blvd S, #5000
Las Vegas, NV 89101

Signed pursuant to Title 28 U.S.C. Section 1746.

s/ Don B. Anderson
Don Benny Anderson
2500 Moultrie Avenue
Mattoon, Illinois 61938-2528
217 246-4999

UNITED STATES COURT OF APPEALS

FILED
OCT 26 2009
MOLLY C. DWYER,
CLERK OF COURT
U.S.COURT OF APPEALS

FOR THE NINTH CIRCUIT

DON BENNY ANDERSON, Petitioner-Appellant, v. FEDERAL BUREAU OF INVESTIGATION, Respondent-Appellee	No. 09-16311 D.C. No. 2:08-cv-01256-JCM-LRL District of Nevada Las Vegas MANDATE

The judgment of this Court, entered 07/29/09, takes effect this date.

This constitutes the informal mandate of this Court issues pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT

Molly C. Dwyer
Clerk of Court

By: Rhonda Roberts
Deputy Clerk

COPY

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

ID# 2689069

CONVICTED PERSONS QUESTIONNAIRE

Date 09/18/2008 **TIME** 12:49 PM **FBI#** 199372AA6

NAME (Last, First, Middle)

ANDERSON, DON BENNY

Aliases/Nicknames and/or Maiden Name

ANDERSON, DONALD BENNIE/COMBS, BILL/ DUNN/JOE

Social Security #	Race	Sex	Height	Weight	Hair
333-32-1135	W	M	509	225	GRY

Eyes	Date of Birth	Place of Birth
BLU	12/19/40	Springfield, IL

Present Local Address (Including City and State)

8724 LITCHFIELD AVE LVN 89134

Local Phone # 396-2730

Permanent Home Address (Including City and State)

2004 ½ S. NOBLE SPRINGFIELD, IL 62704

Phone # 217-670-0194

Scars, Marks, Tattoos, Amputations

NONE

Additional DOBs and/or Social Security Numbers

12/19/1942

Normal Occupation REAL ESTATE INVESTOR

Present Occupation REAL ESTATE INVESTOR

Employer and Address NONE

Time in County	Length of Stay
24 HRS	4 DAYS

Driver's License and State	Veh.Yr.
A53616240360 DL	NONE

CONVICTIONS

F/GM/M	Federal	Year	Offense	Convicted under what name?
F	NO	1983	ARSON 2 CTS	DON ANDERSON

City and State	Sentence	Institution	Served	Year Rlsd.
CLEARWATER, FL	30 YRS	UNK		UNK

F/GM/M	Federal	Year	Offense	Convicted under what name?
F	YES	1986	EXTORTION	DON ANDERSON

City and State	Sentence	Institution	Served	Year Rlsd.
ALTON, IL	12 YRS		PEKIN	2007

F/GM/M	Federal	Year	Offense	Convicted under what name?
F	YES	1986	CONSPIRACY TO EXTORT	DON ANDERSON

City and State	Sentence	Institution	Served	Year Rlsd
ALTON, IL	12 YRS	CONSECUTIVE	PEKIN	2007

F/GM/M	Federal	Year	Offense	Convicted under what name?
F	YES	1987	EXPLOSIVES PROP DEST	DON ANDERSON

City and State	Sentence	Institution	Served	Year Rlsd
MEMPHIS, TN	42 YRS		UNK	UNK

I understand that if I remain in the state of Nevada for a period of more than 48 hours, it is my responsibility to register with the Sheriff or Chief of Police in the county in which I reside, for ALL convictions defined in N.R.S. 179C and 179D inclusive. Any person violating the provisions of N.R.S. 179C is guilty of a misdemeanor. Any person violating the provisions of 179D is guilty of a felony. I acknowledge that all conviction information I have provided is accurate and all inclusive.

s/ DBA
INITIAL

Anderson noted on form "False Information above." Signed by DBA

YOUR ANNUAL VERIFICATION IS DUE IN N/A EVERY YEAR HEREAFTER.

S/ K. SMITH	8949	X	NCIC	FL
Interviewer's Name	P#			

s/ Don B. Anderson

Registrant's Signature Date

LVMPD TSO 34 (REV. 11/06) * AUTOMATED

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DON BENNY ANDERSON,	)	
	)	
Petitioner	)	2:08-cv-1256-JCM-LRL
	)	
vs.	)	ORDER
	)	
FEDERAL BUREAU OF INVESTIGATION, *et al.*,	)	
	)	
Respondent	)	
	)	

Before the court is petitioner's motion for summary judgment (docket #12). This motion shall be denied as moot, as this court transferred the petition for writ of habeas corpus to the United States District Court for the Western District of Tennessee on November 19, 2008.

IT IS THEREFORE ORDERED that the motion for summary judgment (docket #12) is DENIED as moot, as this matter has been transferred to the United States District Court for the Western District of Tennessee.

DATED: April 28, 2009

s/ James C. Mahan
UNITED STATES DISTRICT JUDGE